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BY A BARRISTER-AT-LAW.

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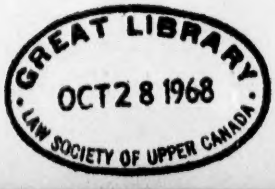


PREFACE.

THE subject treated in this volume is one to which no class of readers in the Canadian Commonwealth can be indifferent, for it is incumbent upon every man to be acquainted with those laws with which he is immediately concerned, lest he incur the censure, as well as the inconvenience, of living in society without knowing the obligations resting upon him. No man can properly discharge the duties he owes to the public, or to himself or his family, without, in some degree, possessing a definite knowledge of the laws by which all are bound, and the obligation resting upon each as an individual.

Men of liberal education should find a peculiar attraction for its study, and be as well versed in its general principles as they are in science or history. Teachers ought at least to know as much about the laws governing society as they do about astronomy.

Gentlemen of independent means cannot afford to be deficient in this branch of learning. It is their landed property, with its varied interests, voluminous train of conveyances, settlements and incumbrances, that forms the most extensive object of legal knowledge, and they should possess a full understanding of the leading principles in connection with estates, agency, conveyancy, tenancy, master and servant, and of the municipal laws in general, which would serve as an effectual check upon their agents, and preserve themselves from gross and notorious imposition.

Clergymen cannot perform the duties required at their hands without a knowledge of the laws governing the people whom they seek to lead, and for whom they are frequently required to act as legal advisers. Living continuously before the public, and acting almost invariably in a representative capacity, pledging their own honor and sometimes the credit of those for whom they act in heavy financial obligations, they surely ought to be learned in the law, and thus imitate Him who, with unerring wisdom, could answer when it was "lawful to give tribute to Cæsar," and when to withhold.

Merchants and other business men who, in every hour of the day, are entering into contracts binding themselves and others, ought to know clearly in each case the extent of the liabilities they are assuming or evading and the rights they are acquiring or bartering away, just as fully as they do the value of the goods they are handling.

Mechanics and artisans, who spend years in apprenticeship to become masters in their calling, should also understand their legal rights and obligations, as they are a sacred trust that they should be able to intelligently guard and justly honor, and thus fortify themselves against injustice and fraud.

Canadian farmers are extensive employers of labor, and for them to be deficient in a minute knowledge of the legislation that has fixed the relative rights, liabilities and obligations subsisting between master and servant is a source of frequent humiliation, and fraught with serious consequences as to loss and possible penalties. Recent legislation has made the relation between master and servant, principal and agent, unequivocal and plain, the obligations of each unmistakable, and the penalties for a breach of contract a definite thing, so that all who read may understand.

All men in a normal state of mind are ambitious, and covet place and influence. Those especially who seek the honor of a representative position, either at Council Board, Legislative Assembly or House of Commons should, by every consideration of propriety, understand the laws already existing before they assume to exercise a power to change, or to modify, or to abrogate any of them, or to enact a new one.

Lastly, it often occurs that persons, either through choice or necessity, write their own wills. As the law has made certain forms necessary in the wording of last wills and testaments, and fixed the number of witnesses to their execution that are essential to their validity, these few requirements should be understood by all who would save their families from being torn asunder by litigation and their estates wasted in the law courts.

INDEX TO CHAPTERS.

INTRODUCTORY.

LAW.

1. Definition of Law. Law is a *rule of action.* As in this volume only *municipal law* will be dealt with, law will be defined as embracing all those rules of action, whether written or unwritten, which have been established by the community for the guidance of its inhabitants.

2. Sources of Law. Throughout the British Empire and the United States the people are the source of all law. In Great Britain every Act passed by the people's representatives must have the assent of the Sovereign before it becomes law. In the various Colonies the signature of the Governor-General, Lieutenant-Governor, or other representative of the Crown must be obtained, and in the United States that of the President or State Governor, as the case may be.

3. Representative Bodies. In Great Britain, the Imperial Parliament, including the House of Commons and the House of Lords. In Canada, the Dominion Parliament, including the House of Commons and Senate and the Legislatures of each Province. In the United States, Congress and the various State Legislatures.

4. Divisions of Law. (1) Common Law. (2) Statute Law.

5. The Common Law is what is called the unwritten law. It had its origin in the early days of Britain. The various races from which have sprung the English people brought with them when they invaded and settled in the country their respective customs and rules of action which, after the various provinces became united under one government, caused considerable confusion for a time, until a uniform body of law was established for the whole kingdom, and thus called the *common law.* Owing to the fact that but few of the early inhabitants were able to read or write, the laws were for a long time simply preserved in memory, hence called the *unwritten law.* The term *unwritten* does not now apply in the same sense that it did then, because every principle of the *common law* has long since found its way into print through the thousands of volumes of reports giving the rulings and decisions of the various courts, thus furnishing precedents for guidance in all future cases equal to any written law as to uniformity and definiteness.

6. Statute Law is sometimes called the written law, in contradistinction to the *unwritten* or common law. It is a law that has been formally written out and introduced into Parliament as a Bill, which being passed, becomes a law of the land under the name of Statute Law.

7. Other Divisions of Law are: (1) Civil Law; (2) Criminal Law; (3) Mercantile Law; (4) Marine Law; (5) Constitutional Law; (6) International Law. These divisions are used because of the different objects to which the law applies.

8. Uniformity of Laws. The laws in Great Britain, Canada and the United States are very similar, owing to the fact that all the States of the Union, except Louisiana, adopted the old common law of England, thus making it a fundamental law of the English-speaking people of the world; and it prevails in all cases where it has not been abrogated or modified by Statute Law.

CHAPTER I.

CONTRACTS.

9. Definition of Contract. "A contract is an agreement between two or more persons upon *sufficient consideration* to do or not to do some particular thing." Contracts are the basis of all business transactions. A man buys a carriage, it is a contract; he hires a man, leases a farm, borrows money on a note, each one is a contract. A railroad or steamboat company agrees to carry 500 tons of coal, it is a contract. You write a letter asking a person to come and clerk for you at $30 per month, he accepts and comes, it is a contract. So contracts include all business transactions, whether great or small.

10. Three Classes of Contracts. (1) Simple; (2) Under Seal; (3) Of Record.

1. Simple Contracts include promissory notes, drafts, cheques, buying and selling, erecting buildings, hiring, and all the manifold transactions taking place each day in community, except those agreements under seal, as deeds, mortgages and bonds.

2. Contracts Under Seal must of necessity be in writing. They do not require a *consideration* to make them valid. The seal indicates greater deliberation and solemnity in executing such contracts, and a person is presumed to enter into them with a full knowledge of their contents, hence debarred from afterward pleading "insufficient consideration."

3. Contracts of Record are the entries in the rolls of a court of its proceedings.

11. Oral Contracts are those made by spoken words, and are usually called verbal. They are binding for the sale of personal property for any amount under $40, but worthless for $40 and upwards. They are also good for a lease of property for under three years, but in regard to other things they are limited in time to one year.

12. Written Contracts may be printed or written, or partly printed and partly written. They may be formal, using the legal phraseology

containing the details of the whole contract, what was to be done, when, where and how to be done, and the consideration. Or they may be informal, merely contained in letters that have passed between the parties.

13. Express Contracts are those where the agreement is distinctly stated and the things to be done or not to be done definitely declared. Example: A farmer purchases a self-binder for $130.00, to be delivered on or before the 5th day of June, and to be paid for on the 5th day of October. Here the terms are all expressed.

14. Implied Contracts are those where the terms are not definitely stated, but are presumed to be understood. Example: A customer leaves his order with a grocer to have delivered at his residence five dozen of eggs and $2.00 worth of sugar. Nothing is said about the price of eggs or the number of pounds of sugar sold for a dollar, or anything about payment, but the parties themselves and the law presumes a tacit understanding as to the prices and the time of payment.

15. Executed Contracts are those which are completed at the moment the agreement is made. Example: A person enters a carriage shop, buys a carriage and pays for it; the contract is finished.

16. Executory Contracts are those which are not completed at the time the agreement is made. Example; A person leaves his order for a carriage to be completed in two months; or he buys it now and agrees to pay for it at a certain date in the future. The contract is not completed until the carriage is finished and the purchase price paid. The larger part of contracts are of this class.

17. Void Contracts are those which from their beginning have no legal effect, except in so far as a party to them may incur a penalty. Example: A contract made on Sunday is void.

18. Voidable Contracts are those which take their full and proper legal effect unless they are set aside by some one entitled to do so. Example: Fraudulent contracts. The party defrauded may void the contract if he chooses, or he may affirm it and compel the other party to perform it.

19. Agreement. There can be no contract formed without an agreement either expressed or implied. As contracts are the basis of all business transactions every man who would guard his interests should thoroughly understand what constitutes a binding contract, and what violates it. In the definition of a contract it was stated that "a contract was an agreement," etc., hence what is an agreement? An agreement is a *mutual assent*—something to which two or more persons give their assent. The two minds meet. A contract therefore is composed of two elements: A proposition, and an acceptance of the terms without any change or modification. Example: Brown offers Jones a Crown Jewel stove for $25, and Jones says, "I will accept your offer," or words to that effect. This constitutes a contract. It may be done orally, or by letter, or by a formal document under seal.

20. A Proposition is the beginning of every contract. One person makes an offer of some kind to another. If the other accepts the offer in the same sense as made, then there is a contract. But if in accepting he makes any change in the terms, there is no contract. Example: One man offers to sell a horse to another for $100, cash. The other party says he will buy the horse but will only give $85. This is not assenting to the proposition, but is in effect a new proposition. The parties failed to *agree*. Any other change in the terms would have the same effect, as for instance, the second party would say to the first that he would accept the offer but could not pay for three months. There is no assent here—no mutual agreement.

21. Assent or Acceptance must be the simple acceptance of the proposition without any change of terms. In such case the two minds meet, and there is mutual assent, hence an agreement—a contract.

22. Time for Assent. An oral proposition which does not include any provision as to time ceases when the parties separate. If a time is fixed for acceptance, it must be given within that time. An acceptance may be given by an act as well as by words, as in case of all implied contracts. Example: The wife or children purchasing necessaries at a store, the assent of the father is implied and binds him, unless notice to the contrary has been given.

23. Assent Obtained Through Fraud is not binding on the party who was defrauded. Such a contract may be rescinded by the innocent party, but he must do so immediately after he discovers the fraud. He must also refuse to exercise ownership over the subject-matter of the contract, or accept any profits arising from it.

24. Assent Obtained Through Force is not binding. If assent is obtained through threat of bodily harm, imprisonment, or any similar illegal pressure, it is void, because under *duress*.

25. Assent Through a Mutual Mistake does not bind either party, because there was no actual assent given. Example: Counterfeit money innocently passed by one person to another in payment of a debt and received as payment by the other party would be no payment, because of the mutual mistake. It would need to be returned promptly, however, after the discovery. There is but small latitude allowed in law for mistakes.

26. Proposition by Mail. When a proposition is made by letter the contract is closed when the letter of acceptance is placed in the post-office. A proposition that does not prescribe any time for acceptance continues valid until revoked, or until a reasonable time has elapsed before acceptance. An acceptance given by telegraph closes the contract when the message is delivered to the company.

27. Withdrawal of Proposition. A proposition may be withdrawn any time before the acceptance has been given. In case a proposition made by letter is to be withdrawn, the letter of withdrawal must be in the post-office before the letter of acceptance is placed in the post-office,

otherwise it is too late. Withdrawal may be made by telegraph or by telephone, but the latter would not be safe unless there were a witness.

28. Sufficient Consideration. This is a law term which laymen who have not had much legal experience are liable to misunderstand. It does not mean taking sufficient time to think or consider, but as a legal term it means the reason or inducement upon which the parties to a contract give their assent and agree to be bound. In every binding contract there must of necessity be a legal consideration, and what the law denominates a "sufficient consideration." It need not be a monetary consideration, but may be something given, or done, or promised to be given or done, by the person making the promise. For this consideration the person to whom the promise is given either gives something, or does something, or promises to give or to do something, in the future.

There are various kinds of *consideration*, and as this is one of the most important features of a contract, several will here be enumerated.

29 Good Consideration is one based upon natural love and affection that exists between near relatives. Example: A father may deed to his child a portion of his land, and it would be valid. He could not recover afterwards even if he desired to do so. A promise to give a deed sometime in the future would not be binding.

A father who is insolvent could not through natural love and affection convey to his son a portion of his property to save it from his creditors. A creditor affected by such a conveyance may bring an action to set aside the conveyance, and the property be sold to satisfy the claim.

A deed thus given at such a time, with natural love and affection for a consideration, would be set aside on the same principle that a chattel mortgage would be that was given on the eve of bankruptcy.

30. Valuable Consideration may be either a benefit to the person making the promise, or a loss to the person to whom the promise is made. It may be something of value given or promised to be given to the person making the promise, or an inconvenience to the person to whom the promise is made. Any of these would constitute a sufficient consideration. Examples: (1) A benefit to the promissor—A tailor promises to make a suit of clothes for a person for $20.00, or for one month's labor. (2) Inconvenience to the promisee—A person might lose a gold watch and tell another person he would give it to him if he could find it. The loss of time and inconvenience experienced in hunting for it would be sufficient consideration to make the promise binding.

31. Mutual Promises are a valid consideration if made at the same time. At a different hour, even on the same day, they would not be binding. Example: Smith promises to dig a well for Jones and Jones promises to pay Smith fifty dollars. One promise is a consideration for the other promise, and the contract is valid.

32. A Conditional Promise is a sufficient consideration for a direct promise, but the conditional promise is not binding unless the consideration is complied with. Example: A horse is purchased for $125.00 on the condition that he proves true in harness; both parties are bound if the

condition is met, but if the condition fails the purchaser is free to rescind the contract.

33. Gratuitous Promises, or promises without a consideration, are not binding, because there is no equivalent given. Contracts without a consideration are void. If there is no consideration there is no reason for the contract, hence mere promises cannot be enforced. Honor would require the fulfilment of a promise, but the law does not, for there has been no equivalent rendered. Exceptions: Instruments under seal and negotiable paper (which see).

34. Consideration as to Contracts Under Seal. Contracts under seal are valid without a consideration. The placing of a seal on a contract makes it final. The seal itself is said to be a consideration.

35. Consideration in regard to Negotiable Paper is *presumed.* Promissory notes, acceptances and cheques in the hands of an innocent holder for value are valid, even if they were issued without a consideration. With such paper consideration is presumed, and a third party buying them before maturity will collect them. The party to whom they were given without value could not collect them; neither could third parties if they purchased them after maturity. Accommodation notes and acceptances are the most noted examples of this kind.

36. Insufficient Consideration. An agreement upon no consideration, or insufficient consideration, cannot be legally enforced. Insufficient consideration, as a legal term, does not mean too little cash or value. A person making a contract is left to judge for himself whether he receives a sufficient value or not. If a person sells a horse for $20.00 that is worth $50.00, or agrees to do a piece of work for $15.00 that is worth $45.00; he must stand by his bargain. The law will not interfere.

Insufficient consideration can only be used as a plea in cases where there is fraud, where the party has been deceived and the insufficiency is caused by the fraud, or in cases like the following: A farmer promises his hired men an addition to their wages in consideration of their making extra exertions to get in the mown hay before a threatening storm; or a vessel captain promises his sailors an addition to their fixed wages if they will make extraordinary efforts during a storm. In either case the promise is gratuitous and not enforceable, the employees being bound to so act in their respective services. A promise to pay another's debt, already incurred in like manner, is gratuitous, and cannot be enforced.

37. Illegal Consideration is where the act to be performed is forbidden by law, as smuggling goods into the country, buying a lottery ticket, publishing or selling immoral literature. In all such cases the party making the promise is not bound to keep it.

38. Impossible Consideration is an agreement to perform something which from its very nature is impossible. Example: A man might agree, as the consideration of some contract, to walk from Buffalo to Montreal in six hours, but he would not be held by law, as it would be impossible of fulfilment. A man might, however, agree to build a certain

house in three days and be utterly unable to accomplish it; still he would be held for damages because it would be possible to have men and material enough at hand to perform it.

39. Moral Obligation is binding in honor, but not in law. Here is where most men make their mistake who say that common sense is all that a man needs to guide him in law. Common sense will teach a sensible man what *ought* to be done, but what the law will undertake to enforce is quite a different thing. Legal obligation is one thing and moral obligation is another, and sometimes just the opposite.

40. Failure of Consideration voids the contract. Example: A person agrees to give $300.00 for a certain interest in a patent to manufacture gas and afterwards the patent is found to be void. The contract cannot be enforced, and, if a note were given, it cannot be collected.

Partial failure of consideration does not void the contract, and the other party may obtain damages only for the part that failed.

41. Who may Contract. Persons competent to contract, that is, those who can bind themselves in a contract, include all persons over twenty-one years of age, and of sound mind.

Persons not competent to contract then are: minors, idiots, insane, and persons wholly intoxicated; also Indians, who are regarded as wards of the Crown.

42. Requisites of a Contract. From what has been given, the requisites of a valid contract may be summed up as follows: (1) It must be possible. (2) It must be legal. (3) It must be made by persons who are competent to contract. (4) It must be assented to by each and all the parties. (5) It requires a consideration, except for those under seal. (6) It must be without fraud. (7) Some require to be in writing and some under seal.

43. Minors, called in the law books Infants, are, in Canada, all persons, male or female, under twenty-one years of age. In a few of the States of the United States females are of age at eighteen years, but not so in Canada. The law in Canada is very fair and just in regard to minors as to their personal liability for debts, and also as to their parents or guardians, and business men should clearly understand it.

44. Minors may Contract for Necessaries. Whatever things are necessary for him in his station and condition in life he may contract for, if he is not living with his parents or guardians, who are able and willing to support him. Minors not at home, and supporting themselves and collecting their own wages, do not bind their parents even for necessaries. A minor purchasing anything held to be a necessary for him in his station in life, and refusing to pay for it, the merchant from whom he purchased the article can sue and recover from him as though he were of age. If, however, the parents should sometimes pay part of the minor's bills for necessaries, they also become liable for the whole of them. Minors not at home and supporting themselves, may sue and recover for wages earned

by themselves, no matter how young they are. They are also liable for any damage done or wrong committed by them; also for any criminal offence.

45. Necessaries for Minors are usually reckoned board, clothing, education and medical attendance, unless unnecessary talent is called. A suit of tweed clothing for a son of a mechanic, or any person in a similar station of life, would be regarded as a necessary, but a fur overcoat or a gold watch would not be. A fur overcoat or a gold watch might be held a necessary for the son of a judge or bank manager.

46. Luxuries for Minors would be anything beyond what the law classes as necessaries. For any such article bought on account the merchant cannot compel the minor to pay; if, however, the original goods are in his possession, the merchant has the power to replevy and take them back.

47. A Minor's Note, given even for necessaries, cannot be collected. If a merchant should chance to take such a note for necessaries, he could not sue on the note; but he could hold the note until maturity and then sue on the open account and present the note as evidence of the debt. He could not sue until the note matured, as that would be the date of payment. If there were an endorser or joint maker, he could enforce payment against other party.

48. A Minor as Agent. A minor may act as agent for another in any capacity, and bind his principal in contracts made on his behalf. But a minor cannot appoint another person as agent to represent him, because the other party could not bind the minor in a contract.

49. A Minor May Ratify His Contract. When a minor comes of age he may ratify his contract made before age, and thus make it valid and binding. The ratification must be in writing to bind him.

50. Repudiating His Contract. A minor having made a contract, which is yet to be executed, has a reasonable time after reaching his majority in which to declare it void. He may also rescind a contract that has been executed, but in such a case he must restore to the other party the *consideration* if it be within his power to do so. If it be impossible to restore the consideration, as in the case of buying live stock that had died, or other goods that had been destroyed by fire, he may still rescind the contract and recover the full purchase price. Although a minor cannot bind himself in a contract, still he can hold the other party to his agreement who makes a contract with him. The same is true in regard to an idiot or an insane person.

51. Parents Liable for Minors. While the minor is living at home and supported by his parents or guardians, they are liable for necessaries purchased by the minor, unless notice has been given to the contrary. They cannot be held liable on luxuries. They are also liable in case the minor is not living at home, but is supporting himself and collecting his own wages if they should pay part of his bills or accounts. They then render themselves liable for all of them.

52. Idiots. Persons having so little intellect as to be unable to perform the ordinary affairs of life cannot bind themselves in a contract. An idiot is a person who never had sufficient reason or intellect to understand the nature and effect of a contract.

53. Lunatics. Persons who have lost their reason are manifestly incompetent to contract. But unless the insanity is of such a nature as to be patent to everybody, it must be established by legal proceedings to be relieved from a contract he may have entered into. To be adjudged insane it is necessary to be so adjudged by a Committee on Lunacy. A person who makes a contract with a lunatic is bound by it as though he were dealing with a person competent to contract. No person but the lunatic or his legal representatives can void a contract that he has made. Contracts for necessaries for him the law holds binding.

54. Lucid Intervals. In some cases of insanity, persons have intervals during which they are perfectly sane. These are called lucid intervals, and contracts made during such periods are binding.

55. Drunken Persons. A person merely strongly under the influence of liquor is not legally, although he may be morally, incompetent to contract. To be relieved from liability on a contract he may have entered into, he must be wholly intoxicated, so as to be unable to use his reason. Drunkenness will not relieve from criminal prosecution.

56. Indians. Our Indians are wards of the Crown, and thus protected from fraud and deception by being placed in a similar position to minors and rendered incapable of binding themselves in a contract. A person who makes a contract with them is bound, but the Indian is not bound, not even for necessaries.

57. Alien Enemies. According to International Law all commerce between two nations at war is suppressed and contracts rendered illegal and void.

58. Illegal Contracts. There are several classes of illegal contracts —illegal because the thing to be done or not to be done is illegal. An agreement to do anything unlawful is void and no court will attempt to enforce it. Even if one party has performed his part or paid his money the law will not help him, as the contract is regarded as wholly vicious and utterly void.

59. Those Against Public Policy. The policy of every community or state is to advance the public good, hence whatever contracts are opposed to the general good are said to injuriously affect public policy, and are, therefore, void. Among such may be mentioned:

60. Contracts in Restraint of Trade; as where a merchant would sell out his business and agree not to engage in business again of any kind, it would be void, because lawful trade is considered for the public good. He could, however, bind himself not to engage in business again in a particular locality, or in a certain line of business, as it would only be a partial restraint of trade. Partial restraint, however, if the nature of the

case makes it questionable, can only be determined by the court after reviewing all the circumstances in that particular case.

The agreement that thus binds a merchant not to engage in a certain line of business again, or in a particular locality should contain a fixed sum as damages for a breach of the contract.

All combines as among manufacturers by which prices are forced up are illegal. Organized strikes by which the action of others is to be coerced are also illegal.

61. In Restraint of Marriage. Marriage is held to be in the public good, hence any contract which wholly restrains marriage is void. The *condition* in a bequest in a will to a child that he or she does not marry is void, but, nevertheless, the bequest is good. A partial restraint of marriage, where it is reasonable, may be valid, as where a bequest is left to a child on the condition that marriage should not be effected until the age of twenty-one, or say twenty-five years, it would be valid because it would merely fix a date when there would be less danger of contracting an ill-advised marriage. But if the time fixed should be, say fifty years of age, it would be void because that would be unreasonable.

A husband's bequest to his wife on the condition that she does not marry again is legal because she has once been married, hence not in restraint of marriage.

62. A Marriage Broker. A contract to pay an agent for contracting a desirable marriage is void; and even the money paid upon such a contract may be recovered if the broker is worth it.

63. Contracts to Obstruct the Course of Justice are void. An agreement of a public official to do something contrary to his duty cannot be enforced, and money promised him to use extra exertions in the discharge of his duty in a particular course cannot be recovered.

64. Immoral Contracts are void. A contract to lead an immoral life is void. But after an immoral course has been begun and a note or other obligation has been given as compensation for damages, the obligation can be enforced. Contracts to publish, sell or forward obscene literature are void. Contracts made on Sunday are void, because that day has been set apart as a day of rest and business pursuits prohibited. All bets, wagers, gambling, lotteries, raffles, buying on margin, and promises to pay for votes, are void. Contracts to defraud the Government by smuggling, or to give an incorrect invoice, are void, and all money promised for such service cannot be collected.

65. Fraudulent Contracts are voidable—not void. A definition cannot be given that would cover all the forms of fraud, but the following will make sufficiently clear what would constitute fraud: A statement of facts that the party making the statement knows to be false. A concealment of facts that are known to one and not readily discernible by the other, and yet such as should be revealed. The misrepresentation must *actually deceive* in order to make a case of fraud. To sustain an action of deceit there must be proof of fraud, and nothing short of that will suffice. Fraud is proved when it is known that a false representation has

been made either, (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. A mere expression of an opinion which turns out to be unfounded will not invalidate a contract. There is a difference between a man saying that an article is worth so much, and saying he paid so much for it.

Example of mis-statement of fact: A person selling a horse to another and representing him to be gentle in harness and true to draw, when as a matter of fact he was not. This would be fraud. The fraud may be practiced by one party upon another to induce him to make a contract; or by two or more persons to defraud a third party.

As stated above, a fraudulent contract is voidable but not void. The party who has been defrauded may void the contract if he wishes, or he may affirm it and compel the other party to perform it. If he wishes to void it, two things are necessary: (1) He must not accept any benefit derived from it, or continue to act under it after he has discovered the fraud. (2) He must give prompt notice of the fraud after he has discovered it. The dishonest party cannot dis-affirm the contract, but in all cases is bound to carry it out if the other party demands it. If both parties practice fraud, neither one can enforce the contract against the other. A promissory note obtained through fraud cannot be collected by the party who obtained it, but upon coming into hands of a third party, before maturity, for value, and who did not know of the fraud, would be valid and good against the maker.

66. Fraud by Insolvent Persons. An insolvent person representing himself as solvent in order to obtain goods on credit, is guilty of a fraudulent act. The seller discovering it, may cancel the contract, or recover the goods if they have been shipped. An insolvent person need not disclose that fact to a creditor from whom he is purchasing goods unless he is questioned as to his financial standing.

67. Fraud by Underbidders. Underbidders at auction sales, employed secretly to run up prices higher than the real value of the articles, are fraudulent towards third parties. A purchaser whose bid has been forced up by such fictitious bidding immediately preceding his last bid, may void his purchase. If underbidders are employed, and that fact publicly announced before the sale, it is not fraudulent. The owner may also fix a price below which the goods will not be sold, or he may reserve one bid for himself.

68. Selling Property Obtained by Fraud. A person obtaining goods, or a promissory note, or any other property through fraud, and transferring them to an innocent third party for value, gives them a good title.

69. Statute of Frauds and Perjuries. This famous Statute was passed in the twenty-ninth year of the reign of Charles II. of England, and still exists there, in this country and in the United States, with but slight change. It was designed to prevent the frequent commission of frauds and perjuries in regard to the enforcing of old claims, and various kinds of promises to answer for the debts of others, and providing that

certain contracts had to be in writing to be binding. The following are the requirements of the Statute which come within the scope of this work as they have been varied by our Statutes:

1. That leases of land for more than three years must be in writing.

2. Contracts for the sale of lands, or for any interest in lands, must be in writing and under seal.

3. Every agreement that by its terms is not to be performed within one year must be in writing.

4. Every special promise to answer for the debt, default or miscarriage of another, must be in writing.

5. Every agreement, promise or undertaking made upon considerations of marriage, except mutual promises to marry (engagement), must be in writing.

6. Where any contract is made respecting real estate, or any interest in real estate, it must be in writing and under seal.

7. Contracts made for the sale of personal property, of $40.00 and upwards, must be in writing, unless part or all of the goods have been delivered, or a part of the purchase price paid. Each of these divisions will be treated under appropriate chapters.

70. Interpretation of Contracts. Although it is supposed that parties entering into a contract fully understand its terms, and will use language in expressing them that will explicitly give their meaning, yet it often happens that such is not the case; hence certain rules have been adopted to interpret them when ambiguity occurs. The following are those of chief importance:

1. THE INTENTION of the parties at the time the contract was made is considered, rather than the literal meaning of the words.

2. CUSTOM AND USAGE of that particular business and place will be regarded where the wording of the contract is doubtful.

3. THE TECHNICAL WORDS and phrases used will be given the meaning in which they are employed in that particular business.

4. VARIATIONS BETWEEN WRITING AND PRINTING. When one part of a contract is written and another printed, if they disagree the written portion will be accepted.

5. LIBERAL CONSTRUCTION. Where the wording of a contract is ambiguous, it is a rule of the courts to construe it liberally, so as to give effect to the common sense of the agreement, even sometimes rejecting objectionable clauses and supplying omissions. But where the Statutes fix a definite meaning, they will invariably be construed in that sense.

6. CONSTRUCTION AS TO TIME. When no time is mentioned in the contract for its execution, the presumption is that it must be done at once, or in a reasonable time, and the courts will so construe it, according to the nature of the work to be done.

7. CONSTRUCTION AS TO PLACE. The law of the place where the contract is made governs its validity, and if it is to be performed there also, it will govern its interpretation. If it is to be performed in another Province or country, it must be in accordance with the laws of that Province or country, otherwise it is void.

71. Place of Suit. In case of trial for breach of contract, the place where the contract is made is where the suit will be tried. Contracts made by letter have for their place where the letter of acceptance was signed, hence there the suit should be. The place of contract in regard to real estate is where the real estate is situated. A note not made payable at any definite place would be sued where it was dated, but if payable at some other place, then that would be place of suit.

Goods ordered or sold from store or warehouse and taken by purchaser or shipped from there, would have that place for place of suit. But goods delivered by a traveller to the retail dealer, the place of suit would be there.

To more fully illustrate the opening, closing, signature, witnesses and general wording of a contract the following agreement for building a house is given:

72. Contract to Build a House. ARTICLES OF AGREEMENT made and entered into on this 14th day of September, A.D. 1896, between James Henderson, of Toronto, and Charles Summers, of St. Catharines, it is agreed in manner and form following, viz.:

The said Charles Summers, for the consideration hereinafter mentioned, doth for himself, his heirs, executors and administrators promise and agree to and with the said James Henderson, his heirs, executors, administrators and assigns, that he, the said Charles Summers shall and will, within the space of four months next after the date hereof, in good and workman-like manner, and according to the best of his skill and art, at Lot 6 Denison Avenue, in the city of Toronto, well and substantially erect, build, set up, and finish one house or messuage according to the plan or draft and specifications hereunto annexed of the dimensions following, viz. (state the dimensions), and to compose the same with such stone, brick, timber, and other materials as the said James Henderson or his assigns shall provide and find for the same. In consideration whereof the said James Henderson doth for himself, his executors and administrators promise and agree to and with the said Charles Summers, his heirs, executors, administrators and assigns, well and truly to pay, or cause to be paid unto the said Charles Summers or his assigns, the sum of three thousand dollars in lawful money of Canada in manner following, that is to say, the sum of one thousand dollars when the stone and brick work are completed, and the remainder, two thousand dollars, thirty days after the work shall be completely finished, and also that he the said James Henderson, his heirs, executors, administrators or assigns shall and will from time to time, as the same shall be required at his and their own proper expense, find and provide all the stone, brick, tile, timber, and other materials necessary for making and building the said house. And for the performance of all and every one of the articles and agreements above mentioned, the said James Henderson and Charles Summers do hereby bind themselves, their executors, administrators and assigns each to the other in the penal sum of five hundred dollars firmly by these presents.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of F. E. MISENER.

JAMES HENDERSON.
CHARLES SUMMERS.

CHAPTER II.

PAYMENTS

73. Payments. The *consideration* in every contract is money unless otherwise provided.

74. Payment in Money. Unless otherwise stated every debt is payable in money. If in gold, it must be in gold; if at a certain place, it must be there; if to be sent by letter or by express, it must be that way. If the directions are complied with and the other party fails to receive the money, the debt is paid.

75. Payment in Property. When the agreement is such, any debt or contract may be paid in goods, or other property or in service. If such articles are not tendered at the time and place agreed upon, the debt becomes payable in money. Or if any property other than the kind agreed upon is tendered, it may be refused and the debt collected in money.

76. Payment by Notes. A promissory note or acceptance being merely a promise to pay is not an absolute payment, and if they are not paid at maturity the debt stands the same as before. The case is different, however, if the note of a third party is given in payment for goods or on a debt. For instance, Jones gives Smith a note he held against Brown in payment for goods or on a debt. This note pays the debt. Of course if Jones indorsed the note so as to make himself liable when he transferred it, then Smith can proceed against him on the note but not for the original debt.

77. Counterfeit Money and Forged Paper. Counterfeit money, a forged note or cheque given and received in good faith does not discharge a debt. The person receiving it must return it to the party who paid it to him within reasonable time. The debt still remains and may be collected as though no such payment had been made.

78. To Whom Payable. Payments should always be made to the person mentioned in the contract, unless it be a negotiable instrument then to the *holder*. If nothing is said, then it must be to the creditor, himself, or to his legal representative, such as an agent or attorney. Care must be exercised when making payment to his representative that said party is authorized to receive the money.

79. Place of Payment. The manner and place of payment are often definitely stipulated, as in the following: "Payable only at A's office in gold to 'A' personally and not otherwise or elsewhere." If a place of payment is stipulated it must be at that place. If no place is mentioned then it is the debtor's duty to find the residence or place of business of the creditor and pay it there.

80. Presumption of Payment. A note, acceptance due bill or receipt in the hands of a debtor is presumptive evidence that the debt is paid, and will so hold unless there is other positive evidence to the contrary. If there has been a great lapse of time without any demand being made the presumption is that the debt has been paid, hence the Statute of Limitations.

81. Application of Payment. The person making the payment has the right to make the application. Where a debtor owes more than one debt to the same creditor, and they are all due, the debtor has the right to say on which debt the payment shall be applied. If the debtor does not say on which debt it should be placed, then the creditor may apply it as he may desire. When neither the debtor nor creditor makes the application, but credit is merely given for the receipt of so much money, in case the business matters were settled in court the court would apply the payment on the debt that is considered the most burdensome to the debtor. If the debts were a book account, an endorsed note, a chattel mortgage and a judgment, the court would apply it on the judgment. If the debt were a book account only, the court would apply the payment on the earliest items.

82. Compromise. A large debt may be paid by a very much smaller one where there is an agreement to that effect. A disputed claim may be paid by any sum where there is an agreement to accept such sum in satisfaction for the claim. The agreement should be in writing, or have a witness. Accord and satisfaction are terms used in settlement of disputed claims by compromise.

83. Composition Deed. In case of an insolvent person where the creditors accept a certain rate on the dollar and give him a discharge, the release is called a Composition Deed.

84. Arbitration and Award. In case of any dispute where parties agree to leave the settlement to arbitration, they are obliged to accept the award as final, providing the arbitrators keep within the limits prescribed for them.

85. Legal Tender of Payment. A legal tender is the attempted performance of a contract, whether it is to do something or to pay something. If payable in goods, then goods of that kind and quality must be offered at the exact place and on the time called for in the contract. If payable in money, it must be in the lawful money of the country, if that is demanded. A creditor cannot be forced to accept a cheque as payment. If payment is not accepted when a legal tender is offered, interest stops at that date, and no law costs or other expenses can thereafter be required of the person making the tender.

86. Refusing Part Payment. The refusal to accept part payment on a note or debt does not affect the debt in any way. The refusal to accept payment tendered in full does not cancel the debt, but it stops all interest and expense thereafter.

87. Merger. The higher security merges the lower. Where one person would be owing another on a book account or note and then gives a mortgage for the same debt, the mortgage, being under seal, is a higher security, and thus the book account or note is merged into the mortgage, hence would be no longer binding. If there were an endorser on the note he would be relieved. If it is desired that the mortgage should not merge the note, it must be stated in the mortgage that it is given as *collateral security;* then the note would still be binding.

A note or bond on which judgment has been obtained is no longer binding as a note or bond.

Where parties have entered into a *simple* contract, either written or oral, and then afterwards enter into the same contract by an instrument under seal, the simple contract is no longer binding, but is merged into the higher.

Where a mortgage would be given as collateral security for a note, the payment of either one discharges both.

88. Legal Tender Money. In Canada copper coins are legal tender for the payment of a debt up to twenty-five cents, silver for $10.00, and gold, Dominion or bank notes for any amount.

89. Breach of Contract is a failure to do what was required, or the doing of what was forbidden. It is necessary to have a clear idea of what constitutes a binding contract in the particular case being considered in order to know definitely whether there has been a violation or breach of contract.

90. Remedies are the means which the law provides for the enforcement of the rights created by the contract. Remedies are divided into two classes—civil and criminal. The criminal are for the punishment of crime and the protection of society, and are dealt with by Government; the civil belong to the individual and enable him to enforce his personal rights and obtain compensation for his private wrongs. His remedy is by suit for damages. There are different classes of damages: (1) Compensation for the actual loss sustained. (2) Nominal, where the refusal to perform the contract is not regarded as intentional, but merely through inability to do so. (3) Liquidated, where the amount is previously agreed upon in case damages should be awarded. (4) Speculative, where the profits that would have resulted from the performance of the contract can be estimated, they may be recovered. (5) Exemplary, where for a malicious violation of a contract a sum in excess of the actual loss is awarded as a punishment.

91. Judgment is the decree of a court delivered after a case has been heard. It may be on a suit to recover a debt, or it may be for a breach of contract. When a contract has been broken the amount of the injury sustained by the one willing to fulfil his part of the contract may be proven in court. The decree of the court ordering the party in default to pay the other a certain sum of money is called a judgment, and comes under the heading of a Contract of Record. The sum of money ordered to be paid is called damages. A judgment that is not satisfied outlaws in six years unless renewed.

92. Execution. If the judgment or amount of damages is not paid within the time specified in the judgment, an execution may be obtained to seize and sell the debtor's property to recover the amount of the judgment and costs. The laws of each Province exempt from seizure under an execution sufficient property to enable the debtor to continue his regular avocation (see List of Exemptions, sec. 93). If property cannot be found on the premises to satisfy the debt then the officer may return the execution marked "no goods." Then the creditor, if he desires it, may bring the debtor before the court on a judgment summons to be examined. (See following section.)

93. Exemptions. The following chattels are exempt in Ontario from seizure under any writ, or from distress by landlord or for landlord's tax:

1. The bed, bedding and bedsteads, including a cradle, in ordinary use by the debtor and his family.

2. The necessary and ordinary wearing apparel of the debtor and his family.

3. One cooking stove with pipes and furnishings one other heating stove with pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs, one shovel, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishings, six towels, one looking glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve plates, twelve tea cups, twelve saucers, one sugar basin, one milk jug, one tea pot, twelve spoons, two pails, one wash tub, one scubbing brush, one blacking brush, one wash board, three smoothing irons, all spinning wheels and weaving looms in domestic use, one sewing machine and attachments in domestic use, thirty volumes of books, one axe, one saw, one gun, six traps, and such fishing nets as are in common use. The articles in this sub-division enumerated not exceeding in value the sum of $150.00.

4. All necessary fuel, meat, fish, flour and vegetables actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of $40.00.

5. One cow, six sheep, four hogs and twelve hens, in all not exceeding in value $75.00, and food therefor for thirty days, and one dog.

6. Tools and implements of or chattels ordinarily used in the debtor's occupation to the value of $100.00.

7. Bees reared and kept in hives, to the extent of fifteen hives.

The debtor may, in lieu of keeping the tools and implements mentioned in section 6, elect to receive the proceeds of their sale in cash, up to $100.00, in which case the officer executing the writ would pay over to the debtor $100.00, if those goods sold for that much net, and this amount the creditor could not seize.

All the chattels so exempt from seizure as against a debtor, after his death, or in case he should abscond, the widow, or family should there be no widow, are entitled to the exempt goods, and such exempt goods shall not be liable to seizure under any attachment against the debtor.

The debtor, his widow or family, or in the case of infants their guardians, may select out of any larger number the several chattels exempt from seizure. It is not left to the officer in charge to make the selection.

None of the articles enumerated in sub-divisions 3, 4, 5, 6 and 7 are exempt from seizure in satisfaction of a debt contracted for that identical article.

The exemptions, as enumerated, are not good against executions for debts which were contracted before October 1, 1887, if the execution has indorsed upon a certificate, signed by the Judge of the court out of which the writ was issued, that it is for the recovery of a debt contracted before the date here mentioned, viz., October 1, 1887. For any debt contracted since that date, this Act applies, and the exemptions may be claimed.

94. Judgment Summons. In case there cannot be property found with which to satisfy the judgment claim, the creditor may have the debtor summoned before the court to be examined on oath as to the disposition he may have made of his property. Every such summons should be obeyed, for the person not making his appearance, at such time as directed in his summons, before the court to be examined on oath as to the disposition he may have made of his property, may be imprisoned for contempt of court. No person in Canada can be imprisoned for debt except the debtor is about to leave the country, and the debt he is owing is $100.00 or over.

After such hearing before the Judge, the latter may order a weekly or monthly payment, and if this sum is not paid the debtor may also be imprisoned for contempt of court. If circumstances should arise afterwards by which this amount cannot be paid, the debtor should go to a lawyer and have a statement prepared to bring the matter before the Judge to have his first order set aside or changed.

No other judgment will be enforced against a debtor while he is paying off in this way one judgment. The cost of a judgment summons is $2.50.

95. Defences. In any suit the defendant has the right to set up some one or more of several pleas to the claims made against him:

1. He may claim that he has performed his part of contract.
2. That he has offered to perform it, but that the other party refused to accept it.
3. A counter claim as an offset to part or to the whole claim of the other.
4. That the claim has become outlawed.
5. That performance was impossible. (1) Through the acts of God, as lightning, tornadoes, inundations or death. (2) By public enemies, as an invading army.

The summons will always name the number of days within which the defence must be filed.

In case a person is handling his own case, the clerk of the court will always give the information that might be needed.

96. Injunction. Where a person is doing something he contracted not to do, or is infringing upon the rights of another, an order may be

obtained from the court restraining him from further action until the case has been legally adjudged. This order is called an injunction.

97. Drawing of Contracts. It is true economy to have all important contracts drawn by a careful lawyer, or other experienced person, but there are many minor matters that should be submitted to writing that may be done by any intelligent layman. In drawing up a contract it would be well to observe the following:

Be very specific in naming all the terms and conditions of the agreement. State accurately the names in full, residence and occupations of the parties to the contract, and the different promises each one is to perform. If a person has several Christian names, include them all. A person who has no trade or profession is usually called a gentleman. In giving the residence of the parties the smallest municipality must be mentioned, as a township, or village, or town, or city, then the county and lastly the province.

The person agreeing to do work or to sell an article is usually called "the party of the first part," and the party paying the money the "party of the second part."

98. Signing of Contracts. The instrument should be signed in the presence of a disinterested witness. If the instrument has already been signed it will be sufficient for the person to *acknowledge* his signature in the presence of the witness. Some require to be under seal.

In all documents to be registered, as deeds, mortgages and bills of sale, it is necessary for the witness to verify his witnessing and signature by an affidavit, which is written on or attached to the document.

99. A Seal should be placed on all important contracts. Even a church subscription, or a promissory note drawn to run several years, is better to have a seal attached. It makes them good for twenty years.

Anything stuck on after the name will answer for a seal as well as a regular seal bought for the purpose. When any device is printed or written after the name or the usual letters "L.S.," the seals may be put on any time afterwards. Properly the seal should be touched by the person signing his name and acknowledged to be his seal. In acknowledging the seal, whether it is put on before or after signature, words something like the following may be used: "I acknowledge this to be my hand and seal." Some persons after signing their name will with pen and ink put their initials on the seal, thus practically indentifying it.

All corporate bodies and joint stock companies are required by law to have a corporate seal, which the officers must attach to or impress on all contracts signed by them in order that they may be binding on the corporation or company.

All instruments under seal are good for twenty years except a mortgage on real estate, which outlaws in ten years after maturity or last payment.

100. Signing by Mark. A person who cannot sign his own name must *request* some other party to do it for him. The following will illustrate the usual form:

Witness: CHARLES SUMMERS. W. his × mark. WINTERS.

A person signing his name this way may take hold of the pen while his name is being written, or he may not; he may make his own cross or he may not, just as he wishes. There must, however, be a witness to the signature.

101. Reading and Explaining. When a person who cannot read is executing an instrument it is required that it be read over and explained to him in the presence of the witness so that he may fully understand what he is doing. The witness in signing such an instrument should mention the fact in some such words as the following: "Signed, sealed and delivered, after first having been read over and explained, in the presence of CHARLES SUMMERS."

102. Erasures and Corrections. If any such should become necessary to make it should be done before the document is executed. In making the corrections do not use a knife or rubber, but simply draw a line through the words with pen and ink so that the original words may be clearly seen. Then write the correct words between the lines, using a caret to show where they should be read in. The witness should put his initials on the margin opposite every such correction or interlineation as evidence that they were made before the execution of the document.

103. Various Sheets. When a document is written on more than one sheet they should be fastened together and paged before being signed. Some who are extraordinarily formal will use a ribbon and put a seal over the tie of the ribbon. The witness sometimes places his initials on each sheet and mentions the number of sheets with his signature.

104. Various Documents. When an agreement is composed of two or more separate documents they are usually marked with the letters of the alphabet as, A, B, C, etc., and referred as schedule A, schedule B, etc. Example: Contracts for the erection of large structures are usually accompanied by plans and specifications marked A, B, etc., which are attached to and form a part of the agreement.

CHAPTER III.

STATUTE OF LIMITATIONS.

105. The time within which the various kinds of debts must be paid is fixed by Statute, and if not paid within that time they are said to be outlawed. The debt is not cancelled, but the creditor loses his right to sue and recover payment by legal process.

The Statute limiting the time within which an action at law must be commenced for the collection or enforcement of a claim is called the Statute of Limitations. The time limit for the various kinds of debt is as follows:

106. Promissory Notes and Acceptances outlaw in six years after maturity or last payment made on either interest or principal. The date of maturity is the last day of the three days of grace, hence the time commences to count the day after the third day of grace.

Any payment, or written acknowledgment of the debt, will keep the paper alive six years from that date as against the party making the payment or the acknowledgment, but not against any other person whose name is on the paper.

107. Book Accounts outlaw in six years from date of purchase or last payment. Accounts are, with regard to outlawing, "itemized," that is, each item or purchase is treated as a separate account, and all moneys paid on it are, unless otherwise specified, applied to the oldest items. This particular feature of accounts should be remembered.

A debtor has the right, when making a payment, to say on what particular account it shall be applied. In case he neglects to do this, the creditor has the privilege of applying it to any part he likes. In case neither one applies it to any particular debt, it is by law, in case of personal accounts, applied to the oldest items.

The various purchases on different dates being put into one bill and rendered to the debtor does not merge them into one debt so as to change the time for outlawing of any particular purchase, but they all remain entirely separate and six years from the date of purchase of each item it is outlawed, unless there has been a part payment on that individual purchase, or a written acknowledgment. A part payment on a running account does not keep the whole alive.

The items of an account may, however, be merged into a single debt by what is called an "Account Stated." To form an "account stated," an agreement must be come to between the debtor and creditor by which the whole account is *acknowledged*. Where this has not been done, if the merchant wants a part payment to keep all the items of the account alive, he must apply part on every individual purchase, even if it is not more than twenty-five cents on each. This can be done by a day book entry without saying anything to the debtor. The following or similar words would answer: "Received from James Smith $4.50 on account, an equal amount to be applied on each purchase up to date." Give the customer the ordinary receipt on account without any reference to the special application you have made of the payments.

A definite formal settlement in writing between the parties, even though no money is paid, will serve to extend the time six years. It always pays to keep an account alive, even though there is not much hope of receiving payment.

108. Mortgage on Real Estate will outlaw in ten years from maturity or last payment on either principal or interest.

109. Chattel Mortgages are good for twenty years as between the debtor and creditor, and will hold the claim that long. As to other creditors, however, it will only hold the property as security for one year, unless renewed, which must be done yearly.

110. Reviving Outlawed Debts. In promissory notes, acceptances, and book accounts, a part payment or a *written* acknowledgment will revive them and keep them alive again for six years from that date, and in case of mortgages ten years.

Money also paid by the debtor to the creditor on account without any instructions as to what debt it should apply to, may be applied by the creditor to any such debt that has been debarred by Statute, and thus reduce it. This cannot be done by a third party to whom such debt may have been transferred, neither does it revive the balance.

111. Exceptions to Outlawing. 1. Bank bills, or bank notes, or other evidences of debt issued by banks never outlaw by lapse of time.

2. Also where there is a legal disability on the part of the creditor so that he cannot sue when the claim is due, the time does not begin to count until the disability is removed. Examples: A minor coming of age or an insane person becoming sane, the disability ceases. The disability, of whatever nature it is must be in existence at the time when the debt became due.

3. When the debtor is living outside the Province or State at the time the debt was due the time for outlawing would not commence to count until his return. If he left the country after the debt was due it would not then form an exception, as proceedings might have been taken before he went away.

CHAPTER IV.

NEGOTIABLE PAPER.

112. Negotiable Paper includes those instruments in use in a community which pass freely from one person to another by simple delivery or by indorsement. The word which gives them this negotiability is *bearer* or *order*. Those which are transferable by simple delivery are written payable to a certain person, firm or corporation, or *bearer*, and those which are transferable by indorsement are written payable to a certain person, firm or corporation, or *order*, and require to have the payee's name written across the back to be transferred.

The instruments classed under Negotiable Paper are promissory notes, acceptances, bank notes and cheques, but besides these are also the following, which are negotiable by indorsement: Certificates of Deposit, Letters of Credit, Warehouse Receipts, Bills of Lading and Coupon Bonds.

Before 1890, each Province legislated in respect to negotiable paper, but at that time a Dominion Act was passed making these papers uniform throughout the whole Dominion and introducing some very important and necessary changes, all of which will be found in this chapter.

113. Promissory Notes. A promissory note is an unconditional written promise to pay a certain sum of money at a specified time or

on the happening of a certain event. Notice carefully the three points in this definition:

1. There must be no *condition* expressed. If there be a condition expressed its character as a promissory note is destroyed and it becomes nothing but a written agreement, binding on both parties but not negotiable.

2. It must be payable in *money*. If it is made payable in anything except money its negotiability is destroyed and it is called a chattel note. (See form.)

3. It must be made payable at some specified time or on the happening of a certain event. If made payable so many days or months after the death of a certain person, or the arriving at age of a certain person, it would be as valid as if made payable after *date*, as they are usually drawn.

114. Parties to a Note. At the inception of a contract by promissory note the parties to the note are maker and payee. After its transfer other parties become interested, and the holder takes the place of the payee. If the original payee in transferring indorses it in the usual way he becomes surety for subsequent holders.

115. Innocent Holders for Value are those who purchase a note before maturity, giving value for it, and not knowing of any fraud, defect or infirmity in the note. Such bona-fide holders for value will collect if the maker and indorsers are worth it, no matter what the fraud may have been by which the note was obtained, or even if stolen. This, of course, does not refer to a *non-negotiable* note that may have been purchased by an assignment of the paper. (See Non-negotiable Notes, sec. 138).

116. Days of Grace. In Canada three days of grace are allowed on all notes and acceptances, except those drawn payable *on demand*, which have no days of grace allowed.

117. Maturity. A note or acceptance is legally due on the third day of grace, and may be paid at any time during the business hours of that day. If payable at a bank, it must be paid during banking hours.

When the time is expressed in days, the actual number of days must be counted. In computing the time, the day upon which the note is dated is not included, but commences on the following day. If the time is expressed in months, it means calendar months, and not merely thirty days. For instance, a note dated April 10th, at three months, falls due July 10th, and the three days of grace added makes July 13th as its legal date of maturity.

118. Maturing on Sunday. A note or acceptance falling due on Sunday, or any legal holiday, is payable on the following day, unless that again were a holiday, in which case it would be the day after that. In New York, and some other States of the Union, a note or acceptance falling due on Sunday or a legal holiday, is payable the day before, but in Canada it is the day after.

119. Place of Payment. It is not necessary to the validity of a note to mention in it any place of payment; but it is desirable, for various

reasons, that it should be done. The maker would then know where to find it at maturity.

If there is an indorser on the note, then it is better for the holder if it is made payable at a certain place, as he would have less difficulty in making the legal presentment required in order to hold the indorser. (To hold indorsers, see sec. 193.) But where there is no indorser, or none that the maker cares to hold for payment, the case is different. Where no place of payment is mentioned in the note the holder is under no legal obligation to present the note for payment at maturity. It is the maker's part to find his note and pay it. But if there is a place of payment specified in the note, then the holder must see that the note is presented there, or he would be in danger of losing subsequent interest.

120. Signatures to Notes. A person need not sign his own name to a note with his own hand, but it is sufficient if his signature is written thereon by some other person by, or under his authority. In case of a corporation it is sufficient if the corporate seal is attached to the instrument, but this is not likely to come into general practice on account of the ease by which forgery could take place. It is not necessary to attach the seal to a note or bill if the corporate name is used.

121. Ink or Pencil. A note or acceptance drawn with lead pencil would be valid; so would an indorsement in pencil be binding; but no person of ordinary prudence would use a pencil, as it can be too easily erased and changes made.

122. Value Received. These words are usually inserted in a promissory note, but they are not necessary to its validity. In regard to negotiable paper, value is *presumed*. (See Accommodation Note, sec. 127.)

123. Alterations of Notes and Acceptances. Where any note or acceptance is materially altered without the consent of all the parties liable on it, the bill is void, except as against the person who made, or who assented to the alterations, and also against subsequent indorsers. Also in this case if the alterations are not apparent and the bill has been transferred before maturity to an innocent holder for value, such holder will enforce payment of it according to its original tenor as if it had not been altered.

The alterations that are held to be material and that destroy the bill, are: Alteration of the date, the sum payable, the time of payment, and the place of payment, also in case of a draft which has been accepted generally, the addition of a place of payment without the assent of the acceptor. In general, any interlineations made in a note or draft by the holder after it has been signed will relieve both the maker and indorsers.

124. Omissions or Wrong Date. Where a note or acceptance payable at a fixed period after date is issued undated, or where an acceptance payable at a fixed period after sight is issued without date of acceptance, any holder may insert therein the true date of issue or acceptance, and the instrument will be payable accordingly. If in this case, however, the holder in good faith but by mistake inserted a wrong date, and the bill subsequently comes into the hands of an innocent holder for

value, it will be payable as though the date so inserted had been the true date.

125. Defects that do not Invalidate. A bill is not invalid by reason that it is not dated, or that it is dated by mistake on Sunday; that it does not specify that value has been given, or name the place where it was drawn or where it is payable. It might be dated either forward or backward. If through oversight no date were placed on a note or draft the holder would have the right to insert the proper date according to the intention of the parties at the time the instrument was made.

126. Innocent Holder for Value. An "innocent holder for value" is the same as another expression used by lawyers, "a holder in due course," and means one who took a note or acceptance which was complete and regular on the face of it, under the following conditions:

1. That he became the holder of it before it was overdue, and that if it had been previously dishonored he had no notice of such fact.

2. That he took it in good faith and for value, and that at that time he had no notice of any defect in the title of the person who negotiated it to him.

Any person thus becoming the holder of a note or acceptance for value on or before maturity, and who does not know of any fraud or illegality in connection with it, will collect it no matter how great the fraud by which it was obtained may have been, except in case of those marked "given for patent right," or in case of forged paper. After a note has thus passed through the hands of an innocent holder for value, and been purged from its infirmity, it becomes immaterial whether any subsequent holder had notice or not of any prior defects or illegality. A person, however, becoming the holder of an overdue note or acceptance takes it subject to all the equities and defects of title which affected it at its maturity, and henceforward no person who takes it acquires any better title than had the party from whom he took it.

127. Accommodation Paper. An accommodation note or acceptance is one where the person signing the note or accepting the draft does so without receiving any value therefor, but merely for the purpose of lending his name to some other person. The accommodation party is liable on the instrument to any holder for value, whether such holder, when he took the note or acceptance, knew such party to be an accommodation party or not. They do not differ in form from other notes or acceptances, and no legal cautions are necessary. The person who assumes such an obligation should have substantial reasons for doing so, and cautions here would be out of place.

128. Payment of Notes. Payment of negotiable paper of any kind should never be made except to the actual holder of the paper who has it in his possession to deliver over, and who does deliver it over upon receipt of the payment. Serious losses are constantly occurring by a neglect of this plain business procedure. Payment even to the supposed holder who has not the note in his possession is not paying the note, but is simply placing that much money in his hands and trusting to his honor to apply

it to the note. The note, however, may have been transferred and the true holder could collect it over again, or it may be in the bank and the party to whom payment was made may be on the eve of bankruptcy, hence the note would have to be paid over again. Paying money to an agent of a firm who has not the note to hand over is simply trusting to the honesty of the agent. His receipt would be worthless as a set off if the agent kept the money and the firm sued the note.

129. Cancelling Signature. When a note is paid the name should never be torn off, as is usually done, but simply draw one or two lines through the signature of both maker and indorser, and file the note away as a voucher. There is the same necessity for preserving a redeemed note as there is a receipt.

130. Surety is the person who agrees to pay in case the maker fails to do so. If he puts his name on the back of the note he is an indorser only, and the holder of the note must meet the requirements of the law in regard to presenting the note for payment (sec. 193). If he writes his name on the face, with that of the maker, he becomes one of the makers, and is, therefore, held for payment, whether the holder presents the note for payment or not.

131. A Minor's Note cannot be collected, either from him or his parents or guardians (see sec. 47). If a minor, or any other person or corporation not competent to contract issues a bill having an indorser or joint maker, the holder can enforce payment from the other party.

132. Note Obtained through Fraud is void in the hands of the original holder, but if he transfers it to another person before maturity, who gives value for it and does not know of the fraud, then this third party will collect it. No difference what the fraud may have been, or deception, or even if it had been stolen, this innocent holder for value has a good title and will collect it. After a note or acceptance has once been purged of its infirmity by passing into the hands of a holder in due course, it becomes immaterial whether any subsequent holder had notice or not of the prior defects or illegality connected with it. If, however, it is transferred after maturity, then the purchaser does not, in that case, obtain any better title than the original owner possessed.

133. A Forged Note is void, and cannot be collected under any circumstances.

134. Various Forms of Notes. An individual note is written, "I promise to pay," and signed by one person.

A joint and several note may be written "I promise to pay," or "we or either of us promise to pay," or "we jointly and severally promise to pay," and signed by two or more persons. In any one of these cases they are all jointly liable, and each one is individually liable as well, so that the holder of the note, in case he has to sue, may proceed against all of them at once, or against as many, or against either one of them he thinks best.

A joint note is written "we promise to pay," or "we jointly promise to pay," and signed by two or more persons.

135 Individual Note. The ordinary form of the individual note is well understood, but where there is no place of payment mentioned in it considerable annoyance may be occasioned. See following form:

$40.00. COLLINGWOOD, August 27th, 1896.

Sixty days after date I promise to pay to W. H. Henderson or order Forty Dollars, with interest at six per cent., for value received.

W. L. MONTAGUE.

With the above form of note, which is not supposed to have any indorser on it, there are only two parties to the paper, the maker and payee. At maturity, October 29th, the holder, W. H. Henderson, is not required to present the note for payment, but the maker is under obligation to hunt up his note and pay it. Mr. Henderson may have transferred it, and if the maker did not find it and redeem it on the 29th October, the present holder could any time after that date put it in suit.

136. Partnership Note is also usually written "*we*" promise to pay, but in that case it is not a joint note, although it has that form, but is a joint and several note. Although three or four may sign, they are all individually liable for payment of the whole note on account of the partnership laws, by which each one is liable for the whole debts of the firm.

137. Joint and Several Note is one signed by two or more persons, who thus promise to pay either jointly or individually, if necessary. There are several forms for the wording in general use, as: "We, or either of us," promise; or "We, jointly and severally," promise; or simply "I" promise to pay; and let as many sign it as are interested, it being an "I promise" for each one. The latter form is preferable, because shorter.

$100.00. ST. CATHARINES, July 29th, 1896.

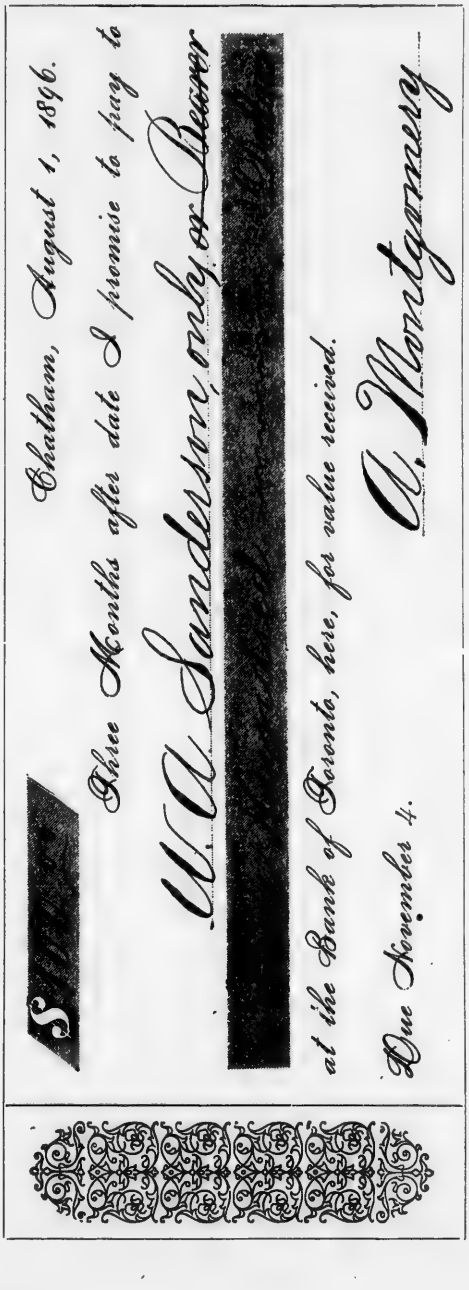
Three months after date we or either of us promise to pay James Smith or order One Hundred Dollars, at the Bank of Toronto here, for value received.

JOHN WINTERS.
J. H. WHITE.

In the above note each one is liable for the whole amount, and if the holder found it necessary to sue in order to recover payment, he could sue both or either one, just as he thought best. If he sued one and collected the whole amount from him, then that one could sue and collect from the other party, that is if the one first sued were only a surety.

Both of the preceding notes are negotiable by indorsement only as they are made payable to James Smith or *order;* hence if he wished to dispose of them he would be compelled to write his name across the back, that is, *indorse* them.

If they were written payable to James Smith or *bearer*, then he could dispose of them simply by delivery or passing them over to the purchaser. It is far better to use *order* instead of *bearer*, because in that case a note lost or stolen before it had been transferred could not be disposed of.



138. Non-negotiable Notes are those made payable to a certain person, firm or corporation, without using either of the words *bearer* or *order*, and placing the word *only* after the name of the payee. This form of note, shown in full size and form on this page, containing the word *only*, shows on its face that it was the intention of the parties to it that it should not be transferred, and it cannot be by merely delivery or indorsement as in case of other notes.

Simply marking out the word *order* or *bearer* from the printed blanks is not sufficient to make the bill non-negotiable. A bill or note made payable to a particular person, but which does not contain additional words, *prohibiting* transfer is still negotiable, notwithstanding the words *bearer* or *order* are omitted. It is regarded by the Statute as simply an omission, the same as forgetting to date the bill, which any holder could subsequently insert. Hence to make the bill non-negotiable it is absolutely necessary to put the word *only* after the name of the payee.

A non-negotiable note or bill may be transferred by assignment the same as a book account or due bill. The party who purchases such a note takes it subject to all the defects and equities that may burden it, and in no respect obtains any better title than the original owner possessed.

139. Date of Payment Stated with Form. The following form of note, which names the date of payment, is rapidly coming into use, and is to be commended:

$75.00. OWEN SOUND, September 10th, 1896.

On the tenth day of December, 1896, I promise to pay to James H. Hunter or order One Hundred Dollars, for value received.

W. P. HENDERSHOT.

140. Note Signed by One who Cannot Write:

$100.00. BRANTFORD, August 4th, 1896.

Three months after date I promise to pay to the order of James Smith, at the Bank of Toronto here, One Hundred Dollars, with interest at eight per cent. per annum, for value received.

Witness: CHARLES SUMMERS. W. His × Mark. WINTERS.

The party signing a note in this way may take hold of the pen while his name is being written or he may not; he may make his own cross or he may not, just as he wishes. There must, however, be a witness to the signature. The party assisting to make the note may sign as the witness if no other person would be convenient.

141. Chattel Note is one payable in merchandise of some kind instead of money. They are not negotiable, even if the words *bearer* or *order* should be inserted, but they may be transferred by assignment the same as a due bill or book account. Following are two forms:

ST. CATHARINES, July 29th, 1896.

Five months after date I promise to pay James Smith, at his store, One Hundred Barrels of good Baldwin Apples at market prices.

J. W. WINTERS.

$85.00. ST. CATHARINES, July 29th, 1896.

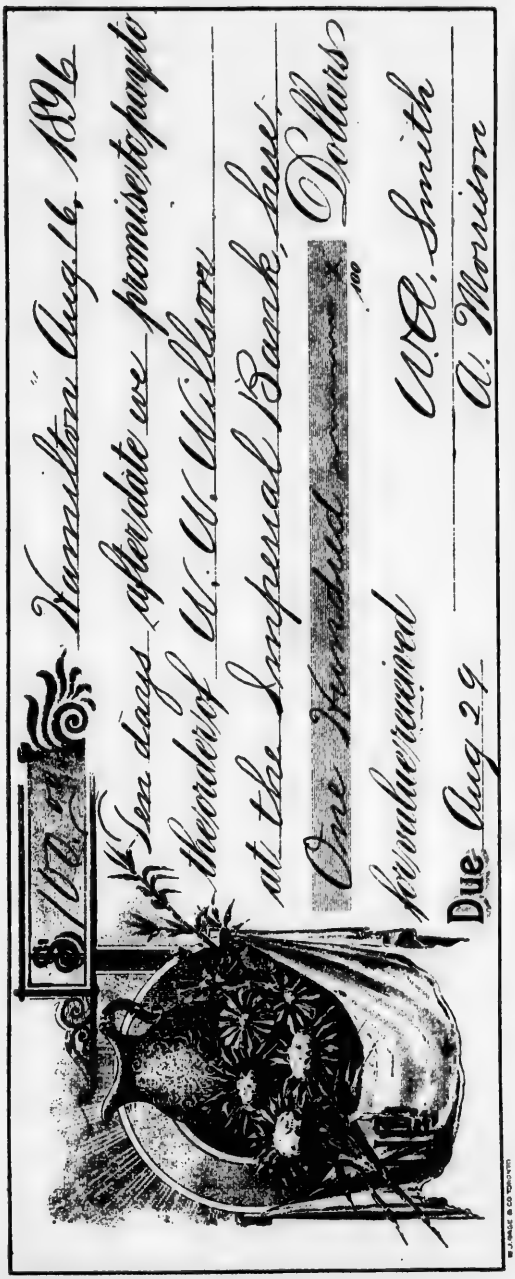
Five months after date I promise to pay James Smith, at his store, One Hundred Bushels of good merchantable Barley, at 85 cents per bushel.

JAMES WINTERS.

If the party giving such a note does not tender the articles at the time and place mentioned in the note, the amount becomes payable in money. If the articles are cumbersome and he offers to deliver them, it will be sufficient. If the payee refuses to receive them the debt is discharged by the tender of the articles, according to the directions in the note, but the property in the articles tendered passes to the payee.

If the debtor should be compelled to take the goods home again, he becomes the bailee for the payee, and must give them ordinary care, but at the risk and expense of the payee. If at any time afterwards the creditor requests their delivery, they must be delivered up if the expenses that may have been incurred have been paid.

Such notes are not negotiable, still they are a binding contract and a very desirable form in which to place all such transactions, which are a frequent occurrence among farmers and fruit growers.



142. Joint Note is written "we promise to pay," or "we jointly promise to pay," and signed by two or more persons, who are not partners. In the full form shown in this page both parties are supposed to have received value and agree to pay it jointly. Each one, in this case, is only liable for one-half the amount. If it should become necessary to sue in order to collect it, the parties must be sued jointly. If one of the parties left the country, and his address could not be ascertained so as to serve him, he may be served *substitutionally;* that is done by obtaining an order from the County Judge to serve another member of the family. The one-half can then be collected from the other party.

If, however, one of these two parties, instead of having an equal interest in the consideration for which the note was given, had no interest at all, but merely signed the note as a surety, and he should leave the country before maturity, or it was found that he was insolvent, so that nothing could be collected from him, in that case the whole amount would be recoverable from the other party who received the value.

Special care must be taken to distinguish between the wording of a *joint* note and joint and several note, for the liabilities of the makers are very different.

143. Patent Right Notes. Any note or acceptance given for a patent right, or for any interest in a patent right, must have legibly written or printed across the face of it before the instrument is issued the words "given for a patent right," and without such words thereon the instrument or any renewal of it is void, unless in the hands of an innocent holder for value.

Any person who intentionally transfers a note or acceptance which he knows was given for a patent right or for an interest in a patent right and is not thus marked is liable to a fine not exceeding $200.00, or one year's imprisonment.

The purchaser of a patent right note or acceptance that is thus marked receives no better title than the original owner possessed, hence if the instrument is affected with fraud or any illegality the mere transference does not relieve it in the hands of an innocent holder for value.

144. Note by Married Woman. All of the Provinces now give married women the exclusive control of their own separate estate, and allow them to enter into contracts independently of their husbands, hence in signing a note or other contract they should use their own Christian name, as "Sara A. Jones" instead of "Mrs. ——"

$50.00. OSHAWA, September 3rd, 1896.

Thirty days after date I promise to pay Henry Alexander or order Fifty Dollars, at the Bank of Toronto here, for value received.

SARA A. JONES.

But where a bill is payable to the order of a married woman, thus, "Mrs. J. W. Jones," the preferable mode of indorsement would likely be "Sara A. Jones, wife of J. W. Jones."

The same signature would be used in accepting a draft drawn on a married woman in that form, "Mrs.," etc.

145. Lost Notes or Bills. Where a note or acceptance has been lost the debt is not thereby cancelled. If it was lost before maturity the person who was the holder may apply to the maker or acceptor to give him another bill of the same tenor, giving him security to indemnify him against all persons in case the lost bill should be found again.

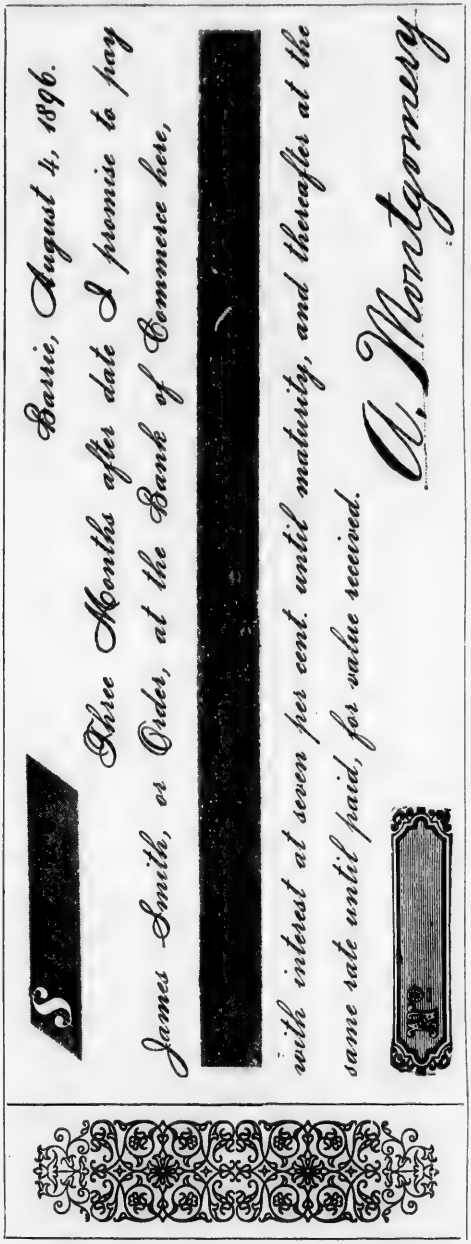
If the acceptor or maker on such request should refuse to give a duplicate bill, he may be compelled to do so.

If action is brought to recover payment upon a lost bill, the loss of the instrument may not be allowed to be set up, provided an indemnity has been given to the satisfaction of the court or Judge against the claims of any other upon the bill in question.

If no tender of indemnity is offered before action is taken, the plaintiff will seldom be allowed his costs, and will probably be ordered to pay the costs of the defendent.

The lost instrument is usually advertised as a warning to the public not to purchase it, but such advertisement would not prevent an innocent holder for value from collecting it, that is, a person who purchased it without knowing of the loss or advertisement.

Any person finding such an instrument and attempting to conceal it, or to negotiate it instead of trying to find the owner, is liable on a charge for larceny or theft.



146. Protecting Interest after Maturity. The form shown here retains the same rate of interest after maturity that it does before. The legal rate of interest in Canada at present is six per cent., but any rate can be collected that a person legally agrees to pay, as we have no usury laws. A note drawn for a higher rate than six per cent. if not paid at maturity will then drop to six, and if drawing less than six it will rise to six unless it expressly stipulates the contrary.

The usual way in which this is attempted by writing immediately after the rate of interest the words "until paid" is not sufficient. The courts rule that that simply means at maturity, for that is the time when the instrument is supposed to be paid.

To make the rate named in the note binding after maturity, words like the following must be used, "with interest at (the rate desired) until maturity, and thereafter at the same rate until paid."

The same precaution must be taken in regard to a mortgage. This is one of those finer points in the law not usually understood.

147. Renewal Notes. Taking another note in renewal for or on account of the whole or part of a note suspends right of action while such security is running and not yet due.

If the renewal note is not paid at maturity, unless it is in the hands of a transferee, the original debt revives. But a note taken merely as collateral security does not suspend the right of action on the original debt.

148. Legal Holidays. The legal holidays for all the Provinces except Quebec are: Sundays; New Year's Day; Good Friday; Easter Monday; Christmas Day; Dominion Day; H.M. Birthday, now the 24th of May, but any day appointed for the celebration of the birthday of the reigning sovereign; Thanksgiving Day, any day appointed by proclamation of the Governor-General or Lieutenant-Governor as a public holiday or a general feast or thanksgiving; Labor Day; Civic Holidays, appointed by proclamation of the chief magistrates of towns and cities; when New Year's, Christmas, Queen's Birthday or Dominion Day falls upon Sunday, then the day following is observed.

And in the Province of Quebec the said days, and also the following: The Epiphany; the Annunciation; the Ascension; Corpus Christi; St. Peter and St. Paul's Day; All Saints' Day; Conception Day.

Promissory notes falling due upon Sunday or a holiday will legally mature on the day next following which is not a holiday.

The time limit also of any contract expiring or falling upon a holiday, the time so limited shall extend to, and such thing may be done on the day next following which is not a holiday.

Persons engaged under a contract of service cannot be compelled to work on any legal holiday, except under special agreement.

Employees working by the week, month or year, unless otherwise specially agreed upon, are entitled to their wages for the holidays.

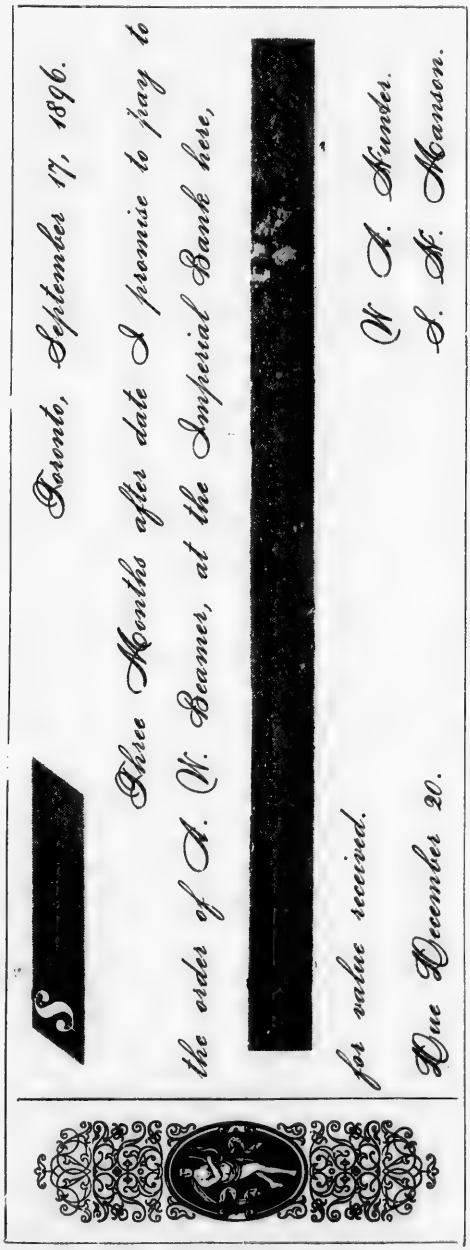
149. Collateral Note. It often occurs that a person wishes to raise money on his own note where security would be necessary, and yet may not wish to give an indorser, but he has shares in some stock company or bank, or has a mortgage which he could place with the creditor as collateral, and thus amply secure him. In such case the following note would be in order:

$200.00. DUNNVILLE, September 10th, 1896.

Three months after date, for value received, I promise to pay Wm. Braund or order, at the Bank of Commerce here, Two Hundred Dollars, with interest at seven per cent.

Having deposited six shares in the Ontario Navigation Co., Limited, which I authorize the holder of this note upon the non-performance of this promise at maturity to sell either at public or private sale, without demanding payment of this note or the debt due thereon, and without further notice, and apply the proceeds, or as much as may be necessary, to the payment of this note and all necessary expenses and charges, holding myself responsible for any deficiency.

A. J. PALMER.

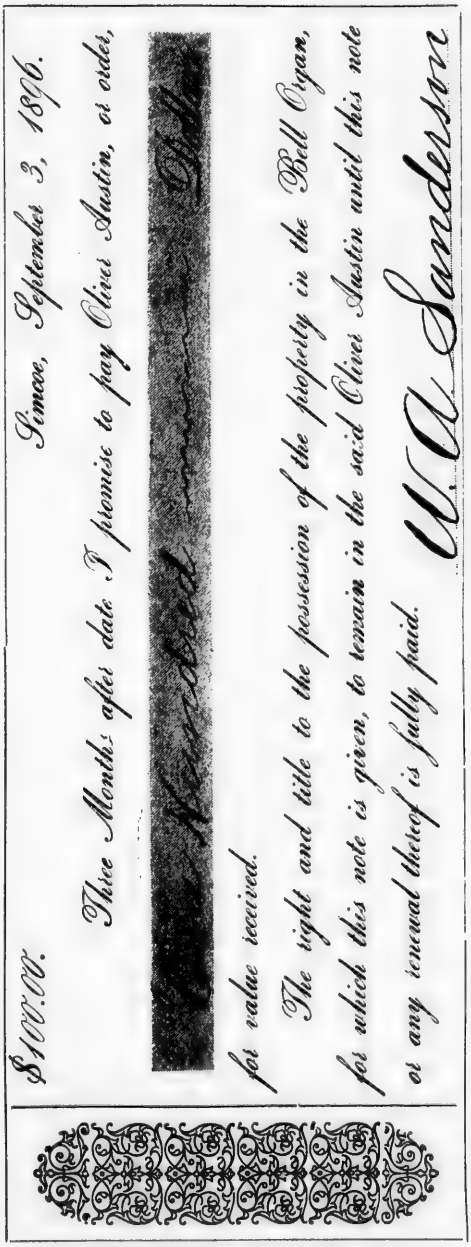


150. Restricting Place of Payment. The form illustrated here is a joint and several note restricting the place of payment, so that if it is not presented at the place stipulated on the date of maturity, no costs or expense will be incurred until after it has been presented. The makers contract to pay this note on December 20th at the Imperial Bank, Toronto. The holder is supposed to have the note at the bank at maturity, but if there is no indorser on it he need not, however, do so. The omission to present the paper for payment on the date of maturity does not discharge the makers, but if any suit were instituted thereon before its presentment no costs would be added provided the makers tendered the money at the bank.

If the note were payable at any other place, a tender of the money at such place would also be a bar to any subsequent costs, and probably to interest after maturity.

If the note were payable at a bank, it would be advisable to deposit the money in the bank to cover the note and interest if there were any.

The statute says that in such cases the question of costs and subsequent interest is left to the discretion of the court, but no judge, except under peculiar circumstances, would allow costs in a case of that nature and but very few would allow interest after maturity.



151. Lien Note. A lien note is an ordinary promissory note with a clause added, which prevents the ownership of the article sold from passing to the purchaser until the note has been paid in full.

Lien agreements, and sometimes accompanied by a lien note, are in common use among sewing machine, organ and piano, and agricultural implement agents, but these are generally lengthy documents, with various conditions attached, for the safety of their property so widely scattered among strangers.

The form here shown is equally as safe for the sale of a carriage, or horse, or household furniture in a community where the parties are known.

Such a note may be taken for an article being sold, but not for any other debt that has already been contracted. The purchaser takes the article and has the full use of it, but he does not acquire its ownership until the full amount of the note or any renewal of it is fully paid.

Such a note taken for an article thus conditionally sold will hold it against all other creditors except for taxes, and can be followed and retaken if sold or mortgaged to others.

Such a note is negotiable the same as though this clause were not added; indeed, it is better than an ordinary note, because it has this much additional security.

In transferring lien notes,

if the holder is to have all the rights of the original payee, so as to follow and claim the goods whenever they might be transferred, it should be done by assignment in addition to the indorsement of the paper.

In this case, it is also advisable to place a seal on the assignment, as that furnishes absolute evidence of the genuineness of the signature.

152. When Registration is Necessary. In Ontario the Lien Law provides that for these conditional sales, the note, receipt or agreement in writing will hold the property in the case of manufactured articles, such as organs, pianos, sewing machines and agricultural impliments, even if sold or mortgaged by the purchaser to other parties, if at the time possession was given to the purchaser the name and address of the manufacturer is painted, printed, engraved on, or attached to the article. In this case it is not essentially necessary to register the note or agreement.

For ordinary household furniture, live stock, buggies, waggons, etc., the note is sufficient without the name being attached.

For manufactured articles, if the name is not attached to the goods or chattels thus conditionally sold, the note or agreement must be filed at the County Court Clerk's office. The fee is ten cents.

153. Retaking Possession. Articles thus sold and the note not being paid at maturity the seller may retake them at once, or he may sue on the note, and if he fails to recover he then may retake the articles.

154. Power to Redeem. In case the goods are retaken by the manufacturer or seller they must be retained twenty days from the time possession was retaken before being sold to others. Any time during these twenty days the purchaser may redeem them by paying arrears, interest and costs.

155. Notice of Sale. An article which has been sold for a greater sum than $30.00, being retaken for a breach of the condition must not only be retained for twenty days but cannot be sold without five days' notice being given to the bailee or debtor. This notice may be given orally or by letter. If it is sent by letter it should be registered and posted at least seven days before the day of sale.

156. Third Parties Asking Information. Any purchaser or prospective purchaser of an article thus covered by a lien can demand and is entitled to receive within five days from the manufacturer or vendor claiming ownership, full information concerning the amount due on the article and the terms of payment; and a refusal to furnish such information will incur a penalty not exceeding $50.00. The inquiry may be made by letter, and the reply sent within five days by registered letter would be sufficient.

157. Copy of Lien with Vendee. The Act also requires the manufacturer or vendor to leave a copy of the lien with the purchaser of the article.

158. Special Form of Lien Note.

$120.00. BELLEVILLE, August, 16th, 1896.

Three months after date I promise to pay G. H. Herman or order One Hundred and Twenty Dollars, at his office, for value received, with interest at seven per cent. until maturity and thereafter at the same rate until paid in full.

The right and title to the possession of the property in the democrat waggon for which this note is given to remain in the said G. H. Herman until this note or any renewal thereof is fully paid, and if default in payment is made, or should I sell or otherwise dispose of my land, or sell, remove, or otherwise dispose of any of my personal property with the intention of leaving the Province, then this note becomes due and payable forthwith, and suit may be entered, tried, and finally disposed of in the court where the head office of G. H. Herman is located, and G. H. Herman may take possession of and hold until this note is paid, or sell the said property at public or private sale, the proceeds thereof to be applied upon that part of purchase price yet unpaid.

I agree to these terms and conditions and hereby acknowledge having received a copy of this lien note.

Witness: J. BELL. WM. WINTER.

159. Instalment Note. It does not affect the negotiability of a note to make it payable in instalments, but it cannot be sued until the last instalment is due, whether the preceding instalments be paid or not. This is guarded against sometimes by adding a clause like the following: "In the event of default in making any of the above payments at the time mentioned, the whole amount of this note shall become due and payable forthwith."

The following lien instalment note will illustrate the form:

$60.00. HUMBERSTONE, September 1st, 1896.

On the first day of each month hereafter for four months consecutively, I promise to pay to Messrs. Augustine & Kilmer the sum of Fifteen Dollars, the whole amounting to Sixty Dollars, the first of such payments to be made on the First of October next. Interest after maturity until paid at the rate of eight per cent. per annum.

In event of the sale or other disposal of my land or personal property, or of default in making any of the above payments at the time mentioned, the whole amount of this note shall thereupon become due and payable forthwith. The right and title to the possession of the property in the democrat waggon for which this note is given to remain in the said Augustine & Kilmer until this note or any renewal thereof is paid in full.

Witness: GEORGE NEFF. JAMES HARDY.

160. Interest. The legal rate of interest in Canada is six per cent., but we have no usury law. A note drawn where nothing is said about interest will not draw interest until maturity, but if not paid at maturity it will then commence to draw six per cent. A note drawing a higher rate than six per cent., if not paid at maturity will drop to six, and a note drawing a lower rate than six, if not paid at maturity will rise to six per cent.

Any rate of interest that a man agrees to pay, and is written in the note or mortgage, will be collected.

If the rate is over or under six per cent., and it is desired that it should remain at that rate after maturity also, a clause must be added like the following: "With interest at (the rate desired) until maturity, and thereafter at same rate, until paid."

Compound interest cannot be collected unless it is agreed in the contract to be paid.

BOOK ACCOUNTS differ from notes. A book account overdue will not draw interest unless the merchant has it printed on his invoices and bills he gives with the goods that interest will be charged after a certain date. Then it can only be six per cent., unless the debtor is willing to pay more. Simply having eight or ten per cent., as the case might be, printed on the invoices does not make the charge legal, and the debtor may refuse to pay anything over six.

Judgments also draw six per cent. interest. Chartered banks are allowed seven per cent. and collect it, but there is no penalty if they charge more.

CHAPTER V.

ACCEPTANCES.

161. Acceptance is the name given to a draft after it has been accepted. A draft is an unconditional written order from one person, called the drawer, to pay a certain specified sum of money, at a specified time, to a third party, called the payee. Drafts are also called Bills of Exchange. Bills of Exchange are divided into two classes, viz., Inland or Domestic, and Foreign.

Those payable in the same country in which they are drawn are called Inland, and those payable in another country are Foreign.

The Inland or Domestic have three days' grace allowed on all except those drawn "on demand."

If a draft is payable in anything but money, or if it orders something to be done in addition to the payment of money, it is not a bill. But to order that it should be paid out of a particular fund, or to indicate a particular fund out of which the drawee is to re-imburse himself, or to name a particular account to be debited with the amount, or to include a statement of what gives rise to the bill, would not be conditional, hence would not affect the bill.

The foreign are usually sent in sets of three, called a set of exchange, and each sent by a different route, or on a different date, so as to guard against delays in case of accident, one of the three being almost certain to reach its destination.

Bankers, lawyers, etc., would not need this explanation, but the general reader will notice that in this work a draft, after it has been accepted, is referred to as a bill, or acceptance.

162. Parties to a Draft. The Drawer is the name of the person who makes or draws the draft. He signs his name in the lower right-hand corner, where the maker of a note would sign.

The Drawee is the one on whom the draft is drawn, and corresponds with the maker of a note, that is, the one who has to pay it. His name is placed in the lower left-hand corner.

The Payee is the one in whose favor the draft is drawn, the person who is to receive the money. The same name applies to both notes and drafts.

A bill or note may be made payable to two or more payees jointly, or it may be to one of two, or to one or more of several, or it may be to the holder of an office for the time being.

When the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

163. Payable to Bearer or Order. A bill is payable to bearer when it is so expressed, or when the only or last indorsement is an indorsement in blank.

A bill is payable to order which is so expressed, or which is made payable to a particular person and does not contain words prohibiting transfer, or indicating an intention that it should not be transferred. A note or bill is negotiable notwithstanding that the word *bearer* or *order* is omitted. Before 1890 a note or bill not payable to order or bearer was absolutely non-negotiable, but not so since that date. Merely striking out the word order or bearer does not make the bill non-negotiable.

164. Acceptance of Drafts. A draft is not binding until it has been accepted any more than an ordinary order on a merchant would be until he has accepted it. In accepting a draft the mere signature of the acceptor is sufficient without the usual words being added. A draft is usually accepted by writing across the face of it the word "accepted," giving the date, stating where it is to be payable, and then signing the name immediately under. With drafts drawn payable at sight, or a certain time after sight, or a demand draft that is not paid when presented should have the date of "acceptance" given, but a draft drawn payable a certain time after "date" need not have the date of acceptance given; but even with these it is as well to give the date of acceptance, too. Where a draft is accepted it is said to be "honored," and where acceptance is refused it is said to be "dishonored."

When a draft is presented for acceptance the drawer may demand two days for acceptance, and it cannot be protested until after that time.

165. General Acceptance is the name used when a draft is accepted in the ordinary way as described above.

166. Qualified Acceptance is when the "acceptance" in express terms varies the effect of the draft as it was originally drawn. The acceptor has that privilege within certain limits. This may be done by what is called the Conditional acceptance, or a Partial acceptance, or one qualified as to Time, or by the acceptance of one or more of the Drawees, but not of all.

167. A Conditional Acceptance is one in which the acceptor makes the payment conditional upon something contained in it, as: "Accepted, payable out of the funds of Amity Lodge, No. 32, A. F. & A. M. W. WINTERS, Treasurer."

In such a case W. Winters would not make himself personally liable.

168. Partial Acceptance is where the acceptor only agrees to pay part of the amount stated in the draft, as: "Accepted September 4th, 1896, for fifty dollars. W. JOHNSON."

In this case say the draft was for $75, the drawer and endorser would have to be notified that it was only accepted for part.

169. Acceptance Changing Time. An acceptor may change the time, as, for instance, from sixty to ninety days, but in all such cases where the original conditions of the draft are changed, the drawer and all endorsers are relieved, unless they are notified. If, after receiving such notice, they do not, within a reasonable time, express their dissent, they are held to have given their assent to the change, and thus remain bound. The change of place for payment does not affect the draft, but the change of amount or time does. The holder also may refuse a qualified acceptance and treat the draft as dishonored, in which case he must have it protested.

170. Mistake in Drawee's Name. Wherever in a draft the drawee is wrongly designated or his name misspelled, he may accept the bill as described, adding, if he thinks best, his proper signature, or he may simply accept it by his proper signature only.

171. Accepting Overdue Bills. Where a bill is accepted or endorsed when it is overdue it is as regards the acceptor who so accepts or the endorser who so endorses it, deemed as payable on demand.

172. Negotiating Overdue Bills. In negotiating an overdue bill it is subject to any defect of title affecting it at maturity. The absence of consideration will not likely be admitted a defect.

173. Kinds of Drafts. Drafts are divided into four classes, according to their wording, which fixes the time they are to run and the way in which the time is to be counted: (1) Demand Draft; (2) Sight Draft; (3) Drafts payable a certain time after sight; (4) Drafts payable a certain time after date. The following sections will give a form for each kind and the law governing it:

174. Time Draft after Sight.

$100.00. HAMILTON, August 26th, 1896.

Three months after sight pay to the order of James Henderson, at the Imperial Bank here, One Hundred Dollars, value received, and charge to the account of

R. OLMSTED.

To W. JENNINGS,
St. Catharines.

When the above draft would be presented, say August 28th, to W. Winters for acceptance, he would write across the face pretty well towards the upper end, which is the left hand side, the words "Accepted August 28th, 1896. Payable at my office. W. Winters." He could make it payable at the Imperial Bank or any other bank if he wished. This draft, being accepted August 28th, would fall due three months after that, including the three days of grace, thus making it mature August 31st.

175. Time Draft After Date.

$100.00. MOUNT FOREST, August 16th, 1896.

Ninety days after date pay to the order of myself, at the Bank of Commerce here, One Hundred Dollars, for value received, and charge to account of

JAMES SMITH.

To W. HUNTER,
Georgetown, Ont.

In accepting the above draft, which is payable after "date," W. Hunter need not write the date of acceptance, as the time when it will mature is fixed in the draft, being made payable ninety days after its date. In the first form it was necessary to insert the date of acceptance, as it is payable three months after "sight," that is after it was presented for acceptance.

This draft W. Hunter made payable at the Bank of Montreal: A bill drawn payable after date need not necessarily be presented for acceptance until presented for payment, but it is generally presented as early as convenient.

176. Sight Draft.

$100.00. INGERSOLL, August 24th, 1896.

At sight pay to the order of Martin Henderson, One Hundred Dollars, for value received, and charge to the account of

To A. SMITH, J. S. WILLIAMSON.
Niagara Falls, Ont.

The above draft is supposed to be paid when presented, but if Mr. Smith would need a little time he may accept it in the usual way, and take the three days of grace.

It will be noticed that we have varied the expression of the payee in the above drafts, the first and third being payable to third parties and the

second to myself. The acceptor also changed the place of payment in the second one.

177. Demand Draft.

$100.00. ACTON, August 31st, 1896.

On demand pay to the order of Brown Bros., One Hundred Dollars, value received, and charge to account of

To W. WINTERS, H. P. MOORE.
Welland, Ont.

The above form of draft has no days of grace allowed, but is payable when demanded.

If it is not paid when presented, the holder has the privilege of giving time. In that case it would be accepted as other drafts, placing the date of acceptance upon it. It would not commence to draw interest until it was presented, but would commence at that date to draw six per cent.

Demand drafts outlaw as to the acceptor in six years from date of the bill, but in regard to the drawer and indorsers the time commences to count from the time of presentment.

CHAPTER VI.

INDORSEMENTS.

178. Negotiation of Bills, Notes, Etc. Negotiable paper has been treated in the previous chapter, and the various paper classed under that heading given in section 112, which see.

A bill payable to bearer is negotiable simply by delivery as it is payable to any person who carries it.

A bill payable to order is negotiable by the indorsement of the payee or holder and is completed by delivery.

179. Purposes of Indorsement. Indorsements are for the purpose of negotiation, or for additional security, or for the acknowledgment of a partial payment of the instrument.

180. Requisites of Indorsement. (1) It must be made on the bill itself. (2) It must be the indorsement of the entire bill or note and not merely of a part of it. (3) If payable to two or more persons who are not partners, all must indorse, unless one has authority to indorse for all.

181. Methods of Indorsement. There are several ways of indorsing a note or draft in general use: (1) Indorsement in Blank. (2) Indorsement in Full. (3) Indorsement without Recourse. (4) Restrictive Indorsement—various forms. (5) Indorsement of Guarantee.

182. Indorsement in Blank is where the name only is written across the back of the instrument. Such an indorser becomes responsible for its payment, and the note or draft negotiable simply by transfer.

183. Indorsement in Full is where the indorser restricts the payment of the bill or note to some particular person. There are several ways in which this indorsement may be worded, and the effect varied in each case. He may write across the back "Pay A. B. or order," and sign his name underneath. In this case A. B. cannot sell the paper without indorsing it. If such a note were lost no one could collect it but A. B. or the one to whom he endorsed it over.

184. Restrictive Indorsement is one which prohibits the further negotiation of the bill, or expresses that it gives merely the authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as for example, if a bill, as indorsed, "Pay D. only," which prohibits its further negotiation, or "Pay D. for the account of H," or "Pay D. or order for collection." These last two authorizes the further transfer of the bill, and all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement. That is, they are merely agents and not holders in due course, and therefore any defence against the first restrictive indorsee is available against them.

The restrictive indorsement gives the indorsee the right to receive payment of the bill, or to sue any party thereto that his indorser could have sued, but gives him no power to transfer his right as endorser unless it expressly authorizes him to do so, as in the last two forms given above.

A note or bill payable to bearer, or to a certain person or bearer cannot have its negotiability restricted by indorsement, but those using the word *order* may be so restricted as shown above.

185. Indorsement Without Recourse is where the note or draft is made transferable, but the indorser evades liability for its payment. The following is the usual form, "Without recourse to me," and the name written underneath as in other indorsements. No subsequent holder can have any claim against such an indorser. Such indorsement is simply for the purpose of negotiation.

186. Indorsement of Guarantee. When bills are subject to protest it may be rendered unnecessary by the indorser writing a form of guarantee over his signature, as:

> "*For value received, I hereby guarantee the payment of the within note.*"
>
> JAMES SMITH.

In this case the guarantor, James Smith, is liable as soon as the note matures, if it is not then paid. Another form:

> *For value received, I hereby guarantee payment of the within note, and waive protest and notice of protest.*
>
> JAMES SMITH.

Sometimes they write: *In consideration of one dollar I hereby guarantee, etc.*

Another form:

For value received, I hereby guarantee the collection of the within note.

JAMES SMITH.

In this case James Smith is not liable until an attempt to collect by legal process has failed.

187. Forms of Indorsement. This page will illustrate the various forms of indorsement to be written across the back of the note or draft.

1. James Smith.	1. Indorsement in Blank. The name only. It holds indorser liable.
2. Pay J. Murray or order. James Smith.	2. Indorsement in Full. It transfers the bill and holds him responsible if maker fails.
3. Pay A. Sanderson. James Smith. Or, Pay A. Sanderson only. James Smith.	3. Restrictive Indorsement. It transfers the paper and by restricting payment to a particular person it is evidence that it was not intended to be negotiated further. I. does not, as in last example, prevent its further transfer, but subsequent holders take it subject to the equities that may burden it as between the parties to such indorsement.
4. Without recourse. James Smith. Or, Without recourse to me. James Smith.	4. Qualified Indorsement. It transfers the paper and frees the indorser from any liability for payment.
5. For collection only on account of James Smith.	5. Specific Indorsement. To guard against loss in sending by mail or through other hands.
6. For discount only to credit of James Smith.	6. Specific Indorsement. A precautionary measure, same as in No. 5.
7. For deposit only to credit of James Smith.	7. Specific Indorsement. Same object as in No. 5 and 6. All these should be practiced by business men more than they are.
8. W. Carter is hereby identified. James Smith.	8. Specific Indorsement. It identifies the holder at the Bank without making the indorser liable for payment.

9. For value received, I hereby guarantee the payment of the within note. James Smith.	9. Indorsement of Guarantee. With this indorsement it is not necessary to protest the paper.
10. For value received, I hereby guarantee payment of the within note, and waive protest and notice thereof. James Smith.	10. Indorsement of Guarantee. Same as No. 9.
11. For value received, I hereby guarantee the collection of the within note. James Smith.	11. Indorsement of Guarantee. The guarantor is not liable until an attempt to collect by legal process has failed.
12. Presentation and protest waived. James Smith.	12. Indorsement Waiving Protest. This form of wording is usually employed when done before maturity.
13. I hereby accept notice of non-payment, and waive protest. James Smith.	13. Indorsement Waiving Protest. This form is common when done at maturity.
14. Received on the within note, Aug. 26th, 1896, Twenty Dollars ($20.00). Sept. 16th, 1896, Forty Dollars ($40.00.)	14. Indorsement of Partial Payment. It is usual in indorsing payments on a note to give the date and amount, and if different persons receive the money, the initials of the person should be given.

188. The Indorser's Contract. By his endorsement he, in effect, agrees in good faith with all the subsequent holders: (1) That the instrument itself is genuine, and all the names on it previous to his own are competent to contract. (2) That he has a good title to the bill. (3) That he is competent to contract. (4) That the maker will pay the bill at maturity. (5) That in case the maker fails to pay the bill he will pay it himself.

189. Relation between Indorsers. Where two or more persons indorse a paper at the same time as security, and the maker fails to pay, the holder may sue all or he may sue and recover from either one he thinks best. In case he collects the note from one, then that one may collect a proportionate share from each of the others. If there were three of them, he could collect one-third from each of the other two; and if only two, then he would collect half from the other party.

If the indorsements were at different dates, as they naturally would be where paper is indorsed as transferred, then the first endorser is security for all after him, etc. If the maker of such a note failed to pay, the holder could sue all the indorsers, or any one of them he might choose. Say there were three; if he sued and collected from all, the last two could each collect his share from the first, thus making him pay all, because he indorsed first, hence was security for both. If the first indorser, however, proved to be insolvent, and the second and third had to pay the whole

debt, then No. 3 would collect what he paid from No. 2, because he endorsed before No 3. hence was his surety. No. 2 would have to pay the whole debt and then look to No. 1 and the maker, who are liable to him, and might sometime be in a position to pay. No. 1 could only look to the maker.

Where two or more indorsements are on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill until the contrary is proved.

190. Collection of Notes and Acceptances. Notes and drafts made payable at a certain place should be presented there for payment on the third day of grace, even if there is no indorser on them. Where no place of payment is specified in a bill, it is not necessary to present it for payment to render the acceptor or maker liable.

If there are indorsers on the paper, and it is not presented on the third day of grace, both the drawer and indorsers are discharged.

If the bill is payable at a bank then it must be presented durin banking hours, but if not at a bank then the holder has the ordinary business day.

If there are no indorsers then it need not necessarily be presented on the date of maturity, but must be presented for payment before any action is taken, or the holder would likely be saddled with the costs, and possibly lose the interest after maturity as well (see sec. 150). The failure of the holder to present a note or acceptance for payment at date of maturity will not discharge the maker or acceptor.

A note payable at a bank is authority for the bank to apply the customer's funds in payment of the bill. If in such a case the maker could show that he had suffered loss by the omission to present the bill on the day of its maturity, he would probably be discharged.

191. Place of Presentment. A bill or note must be presented:

1. At the place specified.

2. If no place of payment is specified, then at the address of the acceptor.

3. If no address is mentioned in the bill, then at his place of business, if known; if not known, then at his ordinary place of residence.

4. If neither is known, then at his last know place of business or residence, or wherever he may be found.

5. Where the place of payment specified in the acceptance is any city, town or village, and no place therein specified, the bill will be presented to the drawees, or acceptors' known place of business or residence, and if there is no such place found, then at the post-office, or principal post-office is sufficient. Many a holder has lost his security by not presenting the paper for payment as the law requires, and many an indorser has paid a note from which he was legally discharged by the holder failing to comply with the legal requirements.

192. Presentment Delayed or Dispensed With. When circumstances beyond the control of the holder prevent presentation, it is excused; but it must be presented as soon as the hindrance ceases.

Also, when presentment has been waived by the parties liable on the instrument.

193. To Hold Indorsers Liable. To hold an indorser liable for payment on a note or bill that is not paid at maturity, it is necessary:

1. To present the note or bill for payment on the third day of grace (for place of presentment, see sec. 191). If this is not done the indorsers are free.

2. If it is not paid, then the paper may be protested, and a notice of the protest sent to each of the indorsers.

3. In most cases it is not necessary to protest, but if it is not protested the notice of the dishonor must be sent just the same.

This notice must contain the following three facts:

1. That the note or bill (giving its date, amount, name of maker, indorsers, etc.) had been presented for payment.

2. That payment was refused.

3 That the holder looks to him (the indorser) for payment.

This notice may be sent by a notary, or the holder himself may send it.

An oral notice is also legal, but it is always better that it be put in writing.

It may be sent merely as a letter, but stating clearly the three facts above mentioned.

If the letter is not registered, it would be advisable to have a witness to its contents and delivery to the post-office.

If the note or draft is made payable at a certain place it must be presented there for payment. If it is not mentioned in the paper where it is payable, then it must be at the place of business or private residence of the maker of the note or acceptor of the draft, as the case may be. If his place of residence cannot be found after due diligence, or if he has left the country, the holder then may present it at the post-office where he lived. It must be presented on the third day of grace during business hours, and not on any other day either before or after.

If these things are not complied with the indorser is free. The indorser might not receive the notice for several days or weeks after, but that would not make any difference so long as it was mailed to his supposed address. The notice should be sent within twelve hours. A similar notice is also sent to the maker.

194. Discharge of Indorsers.

1. Payment of the instrument by the maker or acceptor discharges all the indorsers.

2. Failure to make a legal presentment of the note or bill for payment.

3. Giving time to the principal discharges the sureties unless their consent has been obtained.

4. Any act which discharges the principal debtor discharges the sureties, unless the holder expressly reserves his rights against them, and in that case the principal debtor would still be liable to the claims of the sureties.

5. Any party to a bill is discharged by the intentional cancellation of his signature by the holder or his agent.

195. Protest, is a notice sent by a notary public, who is also usually a lawyer, to the maker and indorsers on a note or acceptance not paid at

maturity. It must contain the following three facts. (1) That the note or acceptance (giving its date, amount, by whom drawn and indorsed) had been presented for payment. (2) That payment had been refused. (3) That the holders look to him for payment. A copy of this notice is mailed to each name on the bill or note.

Protests are always used by the banks, and sometimes by private individuals, because the notary will not fail to send a proper notice so as to legally hold the indorsers.

Generally it is not compulsory to protest, but a formal written notice sent to each of the indorsers would answer the same purpose. It should contain the same three facts mentioned above. Simply an oral notice would be binding also, but there might be difficulty in proving it.

A bill can be protested only at the place where it was dishonored, or at some other place in Canada within five miles of the place of presentment and dishonor.

A bill presented through the post-office and returned dishonored, may be protested at the place where it is returned.

When an acceptor becomes bankrupt, or suspends payment before maturity, the holder of a bill may protest it for better security against the drawer and indorsers.

A bill may be protested at three o'clock. It is questionable if the banks could sustain an action on a protest at one o'clock on Saturday.

196. Indorser's Notice of Dishonor. When a bill has been dishonored, and an indorser receives notice to that effect, if there is a previous indorser to himself he had better forward the notice to him, or notify him by letter that the bill has been dishonored, etc., in order to hold him for payment in case the holder did not notify him. He should be able to prove that the letter containing the notice was duly addressed and posted with the necessary postage prepaid. He has the same time in which to give the notice after he has been notified that the antecedent holder has after the dishonor.

197. Noting for Protest. Where a bill or note cannot be paid on date of maturity, the bank will "note" it for protest. This is done by the notary public the same as the act of protesting, but the expense is less. If not paid, then the paper must be protested the next business day.

198. Fees for Protesting. In Ontario, Nova Scotia, Prince Edward Island and New Brunswick the fees for protesting are 50 cents, and 25 cents for each notice sent to the maker and indorsers. In Quebec the cost of protest is just double.

199. Protest by Magistrate. When there is no notary public or none whose services can be obtained at the place where the paper is dishonored, any Justice of the Peace resident at the place may present and protest the paper, give the necessary notices and have all the powers of a notary public. All the expenses of protest shall be allowed to the holder in addition to any interest that may have accrued.

200. Form of Protest by a Justice of the Peace.

(A copy of the bill or note and indorsements.)

On this day of in the year of 18 I, A.B., one of Her Majesty's Justice of the Peace for the district (or county) of in the Province of , dwelling at (or near) the village of , in the said district, there being no practicing notary public at or near the said village (or other cause) did at the request of , and in the presence of , well known unto me, exhibit the original bill (or note) whereof a true copy is above written unto C. D., the acceptor (or drawer or promissor) thereof, personally (or at his residence, office, or usual place of business), in , and speaking to himself (or his wife, his clerk, or his servant, etc.) did demand acceptance (or payment) thereof, unto which demand he (or she) answered, wherefore, I, the said Justice of the Peace, at the request aforesaid, have protested, and by these presents do protest against the drawer and indorsers (or promissor, and indorsers, or acceptor, drawer and indorsers) of the said bill (or note) and all other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come for want of acceptance (or payment) of the said bill (or note), all of which is by these presents attested by the signature of the said (witness) and by my hand and seal.

(Protested in duplicate.)

Signature of witness.
Signature and seal of the J. P.

201. Without Prejudice. The two words, "without prejudice," have great importance when used in a legal sense. This use can be best shown by an illustration, viz.: Two persons are at variance and likely to be drawn into court, but the one desires an amicable settlement and is willing to make any reasonable concession to effect it. He, therefore, takes these two words, *without prejudice*, and writes them across the upper left hand corner of his letter, or in the body of the letter, and then makes his proposition, whatever it might be. The effect of those words is, that if the other party should not accept the proposition and terms thus offered, but the case goes to suit, this letter cannot be used in court as evidence against the writer. Hence, by using these words in that way a person who wishes to avoid litigation may safely make advances to secure a peaceful settlement, and if not successful his case is not jeopardized. A convenient form at the beginning of the letter would be similar to the following:

Dear Sir: "*Without prejudice*" *I hereby make you the following proposition, etc.*

Also, a debtor who may be taking the benefit of the Statutes of Limitations may, by using these words, frankly acknowledge the justice of the claim against him and assure his creditor that he will still pay him, without reviving the *legal liability*. Also, in offering to make payment on a disputed account or claim by way of a compromise, these words prevent the offer being held to be an acknowledgment of the claim. Every man should be familiar with their use.

202. Cheques. A cheque is a demand draft on a bank. They have no days of grace. Formerly cheques were written payable to bearer; but the form shown on this page is the standard form now used in the United States, and quite generally in Canada.

A cheque is not legal tender, and a person cannot be compelled to accept it in payment for a debt.

203. Use of Cheques. The practice of making payment by cheque is becoming general. It saves time in counting change, prevents mistakes in counting, and saves liability of loss by theft. A returned cheque from the bank is also the best evidence of payment a man can have, and should be filed away the same as a receipt.

Cheques are negotiable the same as notes are, and subject to the same laws.

A cheque may be made to answer for a receipt by inserting after the amount what it was given for, as "in full of account," or "for rent," etc.

Cheques operate as payment until presentment has been made and refused, when the debt immediately revives.

Crossed cheques are those specially marked to be made payable at a certain bank, and to be passed through a customer's account, instead of being paid in cash over the counter. No person is obliged to take a crossed cheque.

204. Presentment of Cheques. A cheque received should be presented for payment not later than the following day. If it should be held an unreasonable time, and the bank fails, it would be the loss of the holder. Even twenty-four hours, under certain circumstances, has been held to be an unreasonable time.

Presentment and notice of dishonor are just as necessary with cheques as with other bills, to render the drawer and prior indorsers liable.

A cheque refused to be paid by a bank upon which it was drawn should be returned immediately to the drawer.

205. Certified or Marked "Good." In sending cheques to strangers or long distances the drawer will sometimes have the ledger keeper of the bank "certify" or mark them "good." In that case it is immediately charged against the drawer's account in the bank, just the same as though he had drawn out the money himself. It is done by writing the word "certified" or "good" on the face of the cheque, giving the name of the bank, and that of the ledger-keeper.

A certified cheque sent anywhere in the country will be cashed by other banks. A cheque thus marked "good" discharges the drawer.

206. Paying Forged Cheques. If a bank pays a forged cheque the bank is the loser. It is the same with "raised cheques," where they have been raised from a smaller to a larger sum, the bank loses the difference, unless it can be shown that the drawer's carelessness in writing the cheque facilitated the forgery. For instance: If you were to write a cheque for "five" dollars, and commenced so far from the end of the paper that the forger had sufficient room to write "fifty" before the five, thus making it "fifty-five," and the imitation in the writing was good, the bank would not be held responsible. Also in cases where the drawer is careless in writing his signature, having no uniform style so the bank could not positively identify his signature, then the bank would not be held responsible for payment of a forged cheque.

207. Certificate of Deposit is a receipt given by a bank for money deposited. It is negotiable and bears interest. It is the same as a certified cheque, and will be cashed by any other bank; hence a convenient way of carrying money when it would not be desirable to have much cash on the person.

CHAPTER VII.

DUE BILLS, ORDERS AND RECEIPTS.

208. Due Bills. A due bill is a written acknowledgment of a debt. They are not negotiable, either by delivery or by indorsement, no matter if the word *bearer* or *order* is used, because they are not a promise to pay.

They may be transferred by assignment. The following is a very good form: "For value received, I hereby assign to James Smith the annexed due bill. W. Winters."

This slip of paper should then be pinned fast to the due bill, and James Smith should notify the maker of the due bill that he had purchased it, and that the money is to be paid to him only.

209. Forms of Due Bills.

1. Payable in goods.

TORONTO, Aug. 4th, 1896.

Due James Smith Ten Dollars in goods from your store.

$10.00. W. WINTERS.

2. Payable in money.

HAMILTON, Aug 4th, 1896.

Due James Smith for value received Ten Dollars.

$10.00. W. WINTERS.

3. Of what is generally called an I. O. U., and payable in cash. It is convenient, and the person's name is not usually inserted.

HAMILTON, Aug. 14th, 1896.

I. O. U. Twenty-five Dollars.

W. WINTERS.

4. Payable in cash.

LONDON, Aug. 14th, 1896.

Due on demand James Smith One Hundred Dollars, value received.

$100.00. W. WINTERS.

5. Payable in specific articles.

LONDON, Aug. 21st, 1896.

Due James Smith, at his store, Twenty Barrels of Northern Spy Apples of good quality.

W. WINTERS.

6. Payable in cash.

BRANTFORD, Aug. 14th, 1896.

Due James Smith, Nov. 10th, 1896, Fifty Dollars, in settlement of account.

$50.00. W. WINTERS.

210. Orders. An order is a written request to deliver goods, or money, on account of the person making the request. When such order is received and acceded to, the person signing the order should be charged for the amount. If the order is in favor of a third party, the name of the party receiving the goods or money should be mentioned in the entry, and the order be preserved until settlement is made.

They differ from a draft in being more simple in form and generally for goods instead of for money.

1. HAMILTON, Aug. 14th, 1896.

Mr. James Smith:

Dear Sir,—Please deliver to Henry Summers Thirty-five Dollars in goods from your store and charge to my account.

£35.00. W. WINTERS.

2. LONDON, Aug. 12th, 1896.

Mr. James Smith:

Dear Sir,—Please pay to Henry Brooks or order Thirty-five Dollars and charge the same to account of

$35.00. H. SUMMERS.

3. TORONTO, Aug. 19th, 1896.

Mr. W. Winters:

Dear Sir,—Please let Mr. H. Brooks have Fifteen Dollars in such goods as he may wish and charge to account of

JAMES SMITH.

4. GUELPH, Aug. 26th, 1896.

Mr. W. Winters:

Dear Sir,—Please pay to the bearer, Mr. H. Brooks, Thirty-five Dollars from the funds left with you yesterday.

H. SUMMERS.

211. Receipts. A receipt is a written acknowledgment of having received a certain sum of money or other value.

A receipt is not absolute evidence of payment, but it throws the burden of proof upon the party who impeaches it. It may have been obtained before payment was made, and then payment refused, or it may have been obtained through fraud, or for some other purpose, but the burden of proof rests upon the party who gave it to show wherein it is not valid.

A receipt given in full of all demands to date would not destroy the creditor's claim for an additional item of account if an error had been made which he could satisfactorily prove. It is evidence only that so much money had been paid.

It is a creditor's duty to give a receipt on the payment of a debt, but generally he cannot be compelled by law to do so. Where he holds a debtor's note, or any other collateral security, he is compelled to surrender it on payment.

Promissory notes, acceptances, cheques, etc., when paid should invariably be retained as vouchers for payment. Every form of receipt, or

other evidence of payment of a debt, should be securely preserved where they can be conveniently referred to when needed. Receipts often save loss of friends, as well as loss of money, in the payment of an account the second time.

When a receipt is taken from an agent or collector it should have the name of the principal on it, as well as that of the agent or collector.

When a receipt is likely to be refused, payment should not be made except in the presence of a witness.

When a receipt is given for money paid on a note or other contract, and an indorsement made, the latter should state the fact that a receipt was given, and the receipt should state that the amount had also been indorsed on the note.

The following forms of receipt are in general use:

212. Receipt on Account.

THOROLD, Aug. 28th, 1896.

Received from James Smith One Hundred Dollars on account.

$100.00. H. SUMMERS.

213. Receipt in full of Account.

THOROLD, Aug. 28th, 1896.

Received from James Smith One Hundred Dollars in full of account to date.

$100.00. H. SUMMERS.

214. Receipt in Full of All Demands.

THOROLD, Sept. 4th, 1896.

Received from James Smith One Hundred Dollars in full of all demands.

$100.00. H. SUMMERS.

215. Receipt for Rent.

PARIS, Sept. 1st, 1896.

Received from James Smith One Hundred Dollars for three months' rent of store, No. 4 St. Paul Street, due April 1st.

$100.00. W. COSBY.

216. Receipt for Rent by Agent.

PARIS, Sept. 1st, 1896.

Received from James Smith One Hundred Dollars for three months' rent of store, No. 4 St. Paul Street, due April 1st.

$100.00. W. COSBY (for C. Hood).

217. Receipt of Money by hands of a Third Party.

FOREST, Sept. 6th, 1896,

Received from Peter Smith, by the hands of H. Young, One Hundred Dollars, in full of all demands.

$100.00. C. HOOD.

218. Receipt for Money Paid by Another.

FOREST, Sept. 6th, 1896.

Received of Peter Smith, One Hundred Dollars, in full of account against Henry Summers.

$100.00. A. MASSON.

219. Receipt for Rent of Farm.

WELLAND, Sept. 12th, 1896.

Received from Peter Smith One Hundred Dollars, being payment in full for six months' rent of farm, due April 1st.

$100.00. A. MASSON.

220. Receipt by Clerk.

WELLAND, Sept. 12th, 1896.

Received of Peter Smith Forty Dollars, in full of account.

$40.00. C. HOOD (Jones).

221. Receipt for Note.

TORONTO, Aug. 16th, 1896.

Received from Peter Smith, note at four months from this date for One Hundred Dollars, in full of account.

$100.00. J. HARDING.

222. Receipt for Services.

OAKVILLE, Sept. 16th, 1896.

Received from Peter Smith, Twenty Dollars, in full for services to date.

$20.00. J. MUNRO.

223. Receipt for Payment of Interest on Mortgage.

TORONTO, Sept. 1st, 1896.

Received from Peter Smith, One Hundred Dollars, being amount in full for six months' interest, due September 1st, on his mortgage, in my favor, dated October 2nd, 1891, which amount is also indorsed on the mortgage.

$100.00. C. MONROE.

224. Receipt for Money on a Note.

TORONTO, Sept. 4th, 1896.

Received of Peter Smith, One Hundred Dollars, in part payment for his note in my favor, dated Sept. 4th, 1895, which amount is also indorsed on the note.

$100.00. C. MONROE.

225. Receipt for Property Held in Trust.

Received from Peter Smith One Fur Overcoat, to be kept in trust for him and delivered to his order without expense.

TORONTO, Aug. 1st, 1896. J. H. JOHNSTONE.

226. Receipt for Papers, Etc.

TORONTO, Sept. 14th, 1896.

Received from Peter Smith the papers described in the following schedule, viz.: Three Bonds and Mortgages made by the said Peter Smith in favor of Henry Williams, to be held in trust and to be delivered to the said Henry Williams if, within ten days, the said Henry Williams pays to the said Peter Smith, Two Thousand Dollars.

W. RUSS.

227. Receipt for Legacy.

ST. CATHARINES, Sept. 4th, 1896.

Received of James Smith, executor of the last will and testament of Henry Williams of Toronto, deceased, the sum of Four Thousand Dollars, in full of a legacy bequeathed me by the said last will and testament.

W. RUSS.

228. Releases. A release is a written discharge of a debt, claim or demand held against one person by another. No special form of wording is necessary simply using words that convey the intention to release, aquit and discharge the person from the debt or obligation. It is given under seal, and will discharge any debt whether acknowledged or not.

Releases may be individual, as when one person releases another from a debt or demand, or they may be mutual, as where two persons have been trading with one another and have contra accounts running for a considerable time. When a settlement is made, they very frequently release each other from all demands. A release will bar out any chance of opening up the matter again by showing that a mistake had been made, whereas a mere receipt in full of demands would not do so.

When a holder of a bill at or after its maturity absolutely and unconditionally renounces in writing his rights against the acceptor or maker, the bill is discharged.

229. General Form of Mutual Release.

This Indenture made the 17th day of September, A.D. 1896, between James Hibbard, of the first part, and Frances Disher of the second part:

WHEREAS, there have been divers accounts, dealings and transactions between the said parties hereto respectively, all of which have now been finally adjusted, settled and disposed of, and the said parties hereto have, respectively, agreed to give to each other the mutual releases and discharges hereinafter contained in manner hereinafter expressed.

NOW THEREFORE THESE PRESENTS WITNESSETH that in consideration of the premises and of the sum of one dollar, of lawful money of Canada, to each of them, the said parties hereto respectively paid by each of them at or before the sealing and delivery hereof (the receipt whereof is hereby acknowledged), each of them, the said parties hereto respectively, doth hereby for himself and herself respectively, his and her respective heirs, executors, administrators and assigns, remise and release and forever acquit and discharge the other of them, his and her heirs, executors, administrators and assigns, all his, her and their lands and tenements, goods, chattels, estate and effects, respectively, whatever and wheresoever, of and from all debts, sum and sums of money, accounts, reckonings, actions, suits, cause and causes of action and suit, claims and demands whatsoever, either at law or in equity, or otherwise howsoever, which either of the said parties now have or has or ever had, or might or could have against the other of them, on any account whatsoever of and concerning any matter, cause or thing whatsoever between them, the said parties hereto, respectively, from the beginning of the world down to the day of the date of these presents.

In witness whereof the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of GEORGE KNIBBS. } JAMES HIBBARD. FRANCES DISHER.

CHAPTER VIII.

CHATTEL MORTGAGES.

230. A Chattel Mortgage is a lien on personal property. It is, in reality, a deed or conveyance of personal property as security for a debt, or for money borrowed. They must be registered at the County Court Clerk's office within five days after their execution. They may be written by any person, but they must be signed and witnessed and sworn to before a commissioner of the High Court or a notary public or magistrate.

By derivation the word mortgage means a death grip (*Mors*, death, *gage*, a grip or grasp). No wonder people are afraid of them. The debtor is called the mortgagor, and the creditor the mortgagee. The effect of a mortgage is practically the same as a bill of sale. It is a conveyance of the title, but not of the possession of the property, but the mortgagee may take possession of the property on breach of any of the covenants.

231. Description of Property. They must contain a full description of the goods and chattels, so they can be readily distinguished; also where they are located and whose possession they are in at the time. In describing an animal give age, color, sex, name, breed, and any particular spot or mark. In describing a machine give the manufacturer's name and number of machine, color and condition.

232. Must be a Bona-Fide Transaction. Every chattel mortgage to hold against third parties must be proved to be *bona-fide*, and not given for the purpose of defrauding creditors, by the mortgagee taking an affidavit to that effect.

233. Registration. To hold the goods and chattels against creditors, subsequent purchasers or mortgagees, in good faith for valuable consideration, the chattel must be registered at the County Court Clerk's office, within which the goods are located, within five days after its execution, otherwise against such parties it is absolutely null and void.

It would, however, still be good against the debtor or mortgagor as evidence of debt.

For the district of Algoma, Thunder Bay, Nipissing, Parry Sound, Muskoka, and Rainy River ten days are allowed for registration, and for Haliburton seven days.

234. Limitation as to Place. Chattel mortgages only hold the property in the one county where they are registered; and every chattel mortgage contains a covenant that the goods will not be removed from the county where they are situate.

Where by mutual agreement the property is transferred to another, county, the mortgage must also be transferred to the office of the Clerk of the County Court of the county to which the goods have been removed.

If all or a portion of the goods covered by a chattel mortgage should be removed to another county, a certified copy of the mortgage must be filed with the County Court Clerk where they are removed to within sixty days, otherwise the goods are liable to seizure and sale under execution, and in such case the mortgagee has no recourse against subsequent purchasers and mortgagees for value. Or the goods may be seized and sold to satisfy the mortgage, on a breach of the covenant.

235. Limitation as to Time. A chattel mortgage holds the *property* for one year only. At the expiration of one year the property is free unless a new mortgage is made, or a renewal of the old one is registered by the mortgagee.

A chattel mortgage holds the *claim* against the debtor for twenty years. because it is an instrument under seal.

It will hold the goods against other creditors for only one year, unless it is renewed within the year. To hold the goods against other creditors for a longer period than one year it must be renewed within the last thirty days before the year expires, and so on from year to year as long as it runs. For this reason most chattel mortgages are drawn for eleven months, instead of one year.

236. Essential Features. A chattel mortgage to hold the goods against other creditors or subsequent purchasers, or mortgagees in good faith, must be registered within five days after its execution.

If a mortgage is taken merely as security for a debt previously contracted it will not be binding against other creditors.

If money is paid it will hold against other creditors, unless done on the eve of bankruptcy, when it would be set aside. Action must be taken within sixty days after date of mortgage.

237. Cautions. All chattel mortgages have not the same wording in the printed blanks commonly used, and the debtor should be certain that the instrument he signs does not give the creditor the right to foreclose the mortgage at any time he pleases upon some fancied breach of the covenant.

For an illegal seizure damages may be recovered, but the wording of some of the mortgages gives the creditor the right to seize before the debt is due, and to do so without giving any notice to that effect.

If the holder of a chattel mortgage allows the mortgagor to dispose of any of the articles covered by it, the mortgage is thereby destroyed. He cannot relieve part without destroying his claim.

238. Assignment of Chattel Mortgages. A chattel mortgage is not a negotiable instrument, but it may be transferred by assignment. The assignment must be filed also at the County Court Clerk's office where the chattel is registered.

239. Discharge of Chattel Mortgage. When a chattel mortgage has been paid a discharge should be filed also at the County Court Clerk's office. It is a document describing the chattel mortgage and stating that the debt has been paid. Many persons think that if they have returned to them the copy that the mortgagee held it is sufficient, entirely forgetting that the duplicate is still on file at the Clerk's office. The discharge should be there also, showing to the public that the debt has been paid.

240. Form of Chattel Mortgage.

This Indenture made (in duplicate) this fourth day of January, one thousand eight hundred and ninety-six.

BETWEEN James Smith, of the Township of Stamford, County of Welland, Province of Ontario, merchant, of the first part, hereinafter called the Mortgagor, and Walter Winters, of the Township of Stamford, in the County of Welland, Province of Ontario, yeoman, hereinafter called the Mortgagee, of the second part,

WITNESSETH that the Mortgagor for and in consideration of Five Hundred Dollars of lawful money of Canada to him in hand well and truly paid by the Mortgagee at or before the sealing and delivery of these Presents (the receipt whereof is hereby acknowledged) HATH granted, bargained, sold and assigned, and by these presents DOTH grant, bargain, sell and assign unto the Mortgagee, his executors, administrators and assigns, ALL AND SINGULAR the goods, chattels, furniture and household stuff hereinafter particularly mentioned and described:

One matched bay team, black mane and tail, five years old, fourteen hands high.

One Democrat waggon, painted black, green striped, manufactured by Augustine & Kilmer, of Humberstone.

One set double carriage harness, black leather and silver mounted, in good condition.

And one Little Massey-Harris self-binder, manufactured by the Massey-Harris Company, Toronto,

All of which said goods and chattels are now lying and being on the premises situated in the Township of Stamford, Lot No. 19, in the Seventh Concession in the Township aforesaid, and being in possession of the said James Smith, the party of the first part,

TO HAVE AND TO HOLD all and singular the said goods and chattels, live stock and farming implements unto the Mortgagee, his executors, administrators and assigns, TO THE ONLY PROPER USE AND BEHOOF of the Mortgagee, his executors, administrators and assigns FOREVER.

PROVIDED ALWAYS, and these present are upon this express condition that if the Mortgagor, his executors, administrators do and shall well and truly pay, or cause to be paid, unto the Mortgagee, his executors, administrators and assigns, the full sum of Five Hundred Dollars, with interest for the same at the rate of seven per cent. per annum, on the fourth day of March, 1897.

THEN THESE PRESENTS, and every matter and thing herein contained, shall cease, determine, and be utterly void to all intents and purposes, anything herein contained to the contrary thereof in any wise notwithstanding.

AND the Mortgagor, for himself, his executors and administrators, shall and will warrant and forever defend by these presents ALL AND SINGULAR the said goods, chattels and property unto the Mortgagee, executors, administrators and assigns against him, the Mortgagor, his executors, administrators and assigns, and against all and every other person or persons whomsoever.

AND the Mortgagor doth hereby for himself, his executors and administrators, COVENANT, PROMISE and AGREE to and with the Mortgagee, his executors, administrators and assigns that the Mortgagor, his executors or administrators; or some or one of them, shall and will well and truly pay, or cause to be paid, unto the Mortgagee, his executors, administrators or assigns, the said sum of money in the said proviso mentioned, with interest for the same as aforesaid, on the day and time, and in the manner above limited for the payment thereof: AND ALSO IN CASE DEFAULT SHALL BE MADE IN THE PAYMENT of the said sum of money in the said proviso mentioned, or of the interest thereon, or any part thereof; or in case the Mortgagor shall attempt to sell or dispose of or in any way part with the possession of said goods and chattels or any of them, or to remove the same or any part thereof out of the County of Welland, or suffer or permit the same to be seized or taken in execution without the consent of the Mortgagee, his executors, administrators or assigns to such sale, removal or disposal thereof, first had and obtained in writing, THEN and in such case it shall and may be lawful for the Mortgagee, his executors, administrators or assigns, with his or their servant or servants, and with such other assistant or assistants as he or they may require at any time during the day to enter into or upon any lands, tenements, houses and premises wheresoever and whatsoever where the said goods and chattels or any part thereof may be, and for such persons to break and force open any doors, locks, bars, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures and places for the purpose of taking possession of and removing the goods and chattels. And upon and from and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful, and the Mortgagee, his executors, administrators and assigns, and each or any of them, is, and are hereby authorized and empowered, to sell the said goods and chattels, or any of them or any part thereof, at public auction or private sale, as to them or any of them may seem meet. And from and out of the proceeds of such sale in the first place to pay and reimburse himself or themselves all such sum or sums of money for principal, interest, insurance and expenses as may then be due by these presents, and all such expenses as may have been incurred by the Mortgagee, his executors, administrators or assigns in consequence of the default, neglect or failure of the Mortgagor, his executors, administrators or assigns in payment of the said sum of money, with interest thereon as above mentioned, or in consequence such sale or removal as above mentioned, and in the next place to pay unto the Mortgagor, his executors, administrators and assigns all such surplus as may remain after such sale and after payment of such sum or sums of money and interest thereon as may be due by virtue of these Presents at the time of such seizure and after payment of the costs, charges and expenses incurred by such seizure and sale as aforesaid.

PROVIDED ALWAYS, nevertheless, that it shall not be incumbent on the Mortgagee, his executors, administrators and assigns to sell and dispose of the said goods and chattels, but that in case of default of payment of the said sum of money, with interest thereon as aforesaid, it shall and may be lawful for the Mortgagee, his executors, administrators or assigns peacefully and quietly to have, hold, use, occupy, possess and enjoy the said goods and chattels without the let, molestation, eviction, hindrance or interruption of him the Mortgagor, his executors, administrators or assigns, or any of them, or any other person or persons whomsoever. AND the Mortgagor doth hereby further COVENANT, PROMISE and AGREE to and with the Mortgagee, his executors, administrators and assigns that in case the sum of money realized under such sale as above mentioned shall not be sufficient to pay the whole amount due at the time

of such sale, that the Mortgagor, his executors and administrators shall and will forthwith pay, or cause to be paid, unto the Mortgagee, his executors, administrators and assigns all such sum or sums of money, with interest thereon, as may then be remaining due.

AND the Mortgagor doth put the Mortgagee in the full possession of said goods and chattels by delivering to him, the Mortgagee, this Indenture of Mortgage in the name of all the said goods and chattels at the sealing and delivery hereof.

AND the Mortgagor COVENANTS with the Mortgagee that he will, during the continuance of this mortgage, and any or every renewal thereof, INSURE THE CHATTELS hereinafter mentioned against loss or damage by fire in some insurance office (authorized to transact business in Canada) in the sum of not less than Five Hundred Dollars, and will pay all premiums and moneys necessary for that purpose as the same becomes due, and will, on demand, assign and deliver over to the said Mortgagee, his executors and administrators the policy or policies of insurance and receipts thereof appertaining. PROVIDED that if on default of payment of said premium or sums of money by the Mortgagor, the Mortgagee, his executors or administrators may pay the same, and such sums of money shall be added to the debt hereby secured (and shall bear interest at the same rate from the day of such payment), and shall be repayable with the principal sum hereby secured.

IN WITNESS WHEREOF the parties to these presents have hereunto set their hand and seals,

Signed, Sealed and Delivered In the presence of CHARLES SUMMER. } JAMES SMITH. WALTER WINTERS.

Affidavit of Mortgagee—

PROVINCE OF ONTARIO: COUNTY OF WELLAND, TO WIT. } I, Walter Winters, of the Township of Stamford, County of Welland, yeoman, the Mortgagee in the foregoing Bill of Sale, by way of Mortgage named, make oath and say: That James Smith, the mortgagor in the foregoing Bill of Sale by way mortgage named is justly and truly indebted to me this deponent, Walter Winters, the mortgagee therein named, in the sum of five hundred dollars mentioned therein. That the said Bill of Sale by way of mortgage was executed in good faith and for the express purpose of securing the payment of the money so justly due or accruing due as aforesaid, and not for the purpose of protecting the goods and chattels mentioned in the said Bill of Sale by way of mortgage against the creditors of the said James Smith, the mortgagor, from obtaining payment of any action against HIM.

SWORN before me at Welland, in the County of Welland, this 4th day of January, 1896. } WALTER WINTERS.

JAMES BROWN, *a commissioner for taking affidavits in H. C. J.*

Affidavit of witness—

PROVINCE OF ONTARIO: COUNTY OF WELLAND, TO WIT: } I, Charles Summers, of the Township of Stamford, County of Welland, mechanic, make oath and say: That I was personally present, and did see the within Bill of Sale by way mortgage duly signed, sealed and delivered by James Smith and Walter Winters, the parties thereto, and that the name Charles Summers set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at the Town of Welland, in the said County of Welland.

SWORN before me at Welland, in the County of Welland, this 4th day of January, in the year of our Lord, 1896. } CHARLES SUMMERS.

JAMES BROWN, *a commissioner for taking affidavits in H. C. J.*

RECEIVED on the day of the date of this Indenture from the mortgagee the sum of five hundred dollars mentioned.

WITNESS, CHARLES SUMMERS. } JAMES SMITH.

241. Form of Discharge of Chattel Mortgage—Dominion of Canada.

To the Clerk of the County Court of the County of Welland, I, Walter Winters, of the Township of Stamford, County of Welland, yeoman, do certify that James Smith, of the Township of Stamford, County of Welland, Province of Ontario, hath satisfied all money due on or to grow due on a certain Chattel Mortgage made by James Smith, aforesaid, to Walter Winters, of the Township of Stamford aforesaid, which mortgage bears date the fourth day of January, A.D. 1892, and was registered in the office of the Clerk of the County Court of the County of Welland on the fifth day of January, A.D. 1895, as No. 4287.

That such Chattel Mortgage has not been assigned, and that I am the person entitled by law to receive the money, and that such mortgage is therefore discharged.

Witness my hand this fifteenth day of December, A.D. 1896.

WITNESS,
CHARLES SUMMERS,
Stamford, residence.
Student, occupation.

WALTER WINTERS.

ONTARIO:
COUNTY OF WELLAND.
TO WIT:

I, Charles Summers, of the Township of Stamford, County of Welland, student, make oath and say:

1. That I was personally present and did see the within certificate of Discharge of Chattel Mortgage duly signed, sealed and executed by Walter Winters, one of the parties thereto.

2. That the said certificate was issued at the Township of Stamford.

3. That I know the said parties.

4. That I am a subscribing witness to the said certificate.

SWORN before me at Welland, in the County of Welland, this fifteenth day of December, in the year of our Lord, 1896.

CHARLES SUMMERS.

JAMES BROWN, *a commissioner for taking affidavits in the H. C. J.*

242. Renewal of Chattel Mortgage.

Statement exhibiting the interest of Walter Winters in the property mentioned in a Chattel Mortgage dated the fourth day of January, 1895, made between James Smith, of the Township of Stamford, County of Welland, of the one part, and Walter Winters, of the Township of Stamford aforesaid, of the other part, and filed in the office of the Clerk of the County Court of the County of Welland, on the fifth day of January, 1895, and of the amount due for principal and interest thereon, and of all payments made on account thereof.

The said Walter Winters is still the mortgagee of the said property and has not assigned the said mortgage. One payment has been made on the said mortgage.

The amount still due for principal and interest on the said mortgage is the sum of three hundred dollars, computed as follows:

Principal	$500 00
Interest 1 year, ending January 4, 1896	35 00
	$535 00
—*Cr.*—	
By cash January 4, 1896	235 00
Balance due	$300 00

Affidavit of mortgagee as to correctness of statement and the balance.

COUNTY OF WELLAND,
TO WIT:

I, Walter Winters, of the Township of Stamford, County of Welland, the mortgagee named in the Chattel Mortgage mentioned in the annexed statment, make oath and say:

1. That the annexed statement is true.

2. That the Chattel Mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

SWORN before me at the Town of Welland, County of Welland, this 4th day of January, 1896.

WALTER WINTERS.

JAMES BROWN, *a commissioner for taking affidavits in H. C. J.*

CHAPTER IX.

MORTGAGES.

243. A Mortgage on real estate is a deed or conveyance of the property by the debtor to the creditor to secure the payment of a certain sum of money, with a "proviso" that it shall become void upon the payment of the debt and accumulated interest.

244. Registration of Mortgages. A morgage is binding on the property as soon as it is executed, but the first mortgage registered is the one that has first claim. Of three mortgages that might be given on the same property the same week or day, the first one that is recorded is first mortgage, no difference whether it was written first or last.

245. Be Certain of Titles. Before paying over the money there should be an *abstract* of title procured; then sign and register the mortgage and have the abstract continued so as to include the mortgage, thus making certain that nothing has been entered in the meantime. At the same time this is being done the Sheriff's office should be searched to see if there are any judgments, and the Treasurer's office to see if taxes are all paid. With these precautions a safe title would be secured.

246. Various Mortgage Clauses. There are various clauses in a mortgage that should be noticed. One provides that if interest is not paid it may be compounded; another, that if taxes are not paid the lender may pay them and charge the same rate of interest that the mortgage draws; another one provides that if the borrower does not keep the buidings insured for a certain specified sum the lender may insure them and charge the same rate of interest the mortgage draws.

Loan companies and sometimes private individuals put in various extra clauses to better secure themselves, and these should all be carefully noticed before signing the mortgage.

247. Discharge of Mortgage. When a mortgage has been paid the lender is required to give the borrower a discharge, which is a statutory form of receipt. When this has been filled out and signed in the presence of witness, duly sworn, it is registered by the debtor or borrower.

If the mortgage has been assigned, the assignment should be as accurately described in the discharge as the mortgage itself. The date, registration, etc., should be taken from the registrar's certificate on the assignment.

A discharge operates as a re-conveyance of the lands of the mortgagor or his legal representatives.

For a Form of Discharge of Mortgage see section 239 of Chattel Mortgage, which is the same in every particular, simply by omitting the word chattel wherever it occurs.

248. Outlawing of Mortgages. Mortgages on real estate outlaw in ten years after maturity or last payment of either principal or interest, unless re-acknowledged in writing.

249. Form of Mortgage.

This Indenture made (in duplicate) the first day of March, one thousand eight hundred and ninety-six, in pursuance of the Act respecting Short Forms of Mortgages:

Between James Robert Manning, of the Township of Ancaster, in the County of Brant, Province of Ontario, farmer, of the first part, hereinafter called the mortgagor;

Ida Jane Manning, wife of the party of the first part, of the second part;

And James William Brown, of the Township of Ancaster aforesaid, gentleman, of the third part, hereinafter called the mortgagee.

Witnesseth that in consideration of One Thousand (1,000) Dollars of lawful money of Canada now paid by the said Mortgagee to the said Mortgagor (the receipt whereof is hereby acknowledged). The said Mortgagor doth Grant and Mortgage unto the said Mortgagee, his heirs, executors, administrators and assigns forever.

All and Singular that certain parcel or tract of land and premises situate, lying and being in the Township of Ancaster aforesaid, contained by actual measurement One Hundred Acres, more or less, being composed of Lot Number Twelve (12), on the Fourth (4) Concession of the Township of Ancaster aforesaid; and Ida Jane Manning, of the second part, hereby bars her dower in said lands

Provided this Mortgage to be void on payment of One Thousand Dollars of lawful money of Canada with interest thereon at five per cent. per annum, as follows: The said principal sum of One Thousand Dollars to be due and payable in four equal annual instalments of Two Hundred and Fifty Dollars each, with interest at the rate of five per cent. per annum on the unpaid principal, payable annually with each instalment of principal. The first of such payments of principal and interest to be due and payable on the first day of March, A.D. 1897, and taxes and performance of statute labor.

The said Mortgagor covenants with the said Mortgagee that the Mortgagor will pay the mortgage money and interest and observe the said proviso, that the Mortgagor has a good title in fee simple to the said lands, and that he has the right to convey the said lands to the said Mortgagee.

And that on default the Mortgagee shall have quiet possession of the said lands. Free from all encumbrances.

And that the said Mortgagor will execute such further assurances of the said land as may be requisite.

And that the said Mortgagor has done no act to encumber the said lands.

And that the said Mortgagor will insure the Buildings on the said lands to the amount of not less than Six Hundred Dollars currency.

And the said Mortgagor doth Release to the said Mortgagee all his claims upon the said lands subject to the said proviso.

Provided that the said Mortgagee on default of payment for four months may, on giving three months' notice in writing, enter on and lease or sell the said lands.

Provided that the Mortgagee may distrain for arrears of interest.

Provided that in default of the payment of the interest hereby secured the principal hereby secured shall become payable.

Provided that until default of payment the Mortgagor shall have quiet possession of the said lands.

In Witness Whereof the said parties hereto have hereunto set their Hands and Seals.

Signed, sealed and delivered in the presence of R. H. Olmsted. } James Robert Manning. [L.S.] Ida Jane Manning. [L.S.]

County of Brant, to wit: } I, Russell Hamilton Olmsted, of the Village of Ancaster, in the County of Brant, manufacturer, make oath and say:

1. That I was personally present, and did see the within Instrument and Duplicate thereof duly signed, sealed and executed by James Robert Manning and Ida Jane Manning, two of the parties thereto.

2. That the said instrument and duplicate were executed at the Village of Ancaster of the said Township of Ancaster.

3. That I know the said parties.

4. That I am a subscribing witness to the said Instrument and Duplicate.

Sworn before me at the Village of Ancaster, in the County of Brant, this first day of March, in the year of our Lord, 1896. } R. H. Olmsted.

H. N. Hibbard, *a commissioner for taking affidavits in H. C. J., etc.*

250. The Re-Payment Clause, which provides when and how the loan or debt is to be repaid, should have great care and be made so explicit that there cannot be any doubt or quibble as to the time and manner of the payment. Some persons desire the whole amount of principal payable in one sum at a fixed date, but the interest payable in annual or semi-annual instalments, as the case may be, while others would desire to repay part of the principal each year as well as the interest. The form shown here is of the latter class. The wording can easily be varied to suit any case.

251. Sinking Fund Mortgages are those in which the principal and interest together are divided into a number of equal yearly, or half-yearly, or quarterly or monthly payments. This form is not used much in Canada since the recent legislation made it compulsory to state in the Repayment Clause the four following particulars: (1) The amount of the loan. (2) The rate of interest. (3) The part of each payment that is for interest. (4) And the part of each payment that is for principal.

With this protection the borrower may know whether he is paying five, six or twenty per cent. interest, as the case may be. The Building Societies are about the only institutions still using this old "sinking fund" form of mortgage.

252. Power of Sale. Every mortgage contains a clause similar to the following: "Provided that the mortgagee on default of payment for three months may, on one month's notice, enter on and lease or sell the said lands," etc. This clause empowers the mortgagee, after complying in all respects with the terms of the notice, to take possession of and sell the mortgaged lands.

253. Provision for Foreclosure. Foreclosure of Mortgage is where the debtor fails to meet the payments and the lender has to take possession and sell to satisfy the claim. The notice may be effectually given either by leaving the same with a grown up person on the mortgaged premises, if occupied, or by posting on the door of the dwelling-house or other conspicuous part of the premises, if unoccupied, or by publishing the same for four consecutive times in some newspaper published in the county in which the lands are situated, and the lands may be sold either by public or private sale, and either for cash or credit, and the mortgagee or assigns may buy in and resell the said lands, or any part thereof, either by private sale or public auction, without being responsible for any loss or deficiency for, or on account of such estate; and that no purchaser under such power of sale shall be bound to inquire into the legality or regularity of any sale under the said power, or to see to the application of the purchase money.

Real estate being simply taken possession of, without foreclosure of a mortgage, may be redeemed within twenty years by procuring an order from the Court of Chancery. If the property were sold under the mortgage, it could not thus be redeemed, hence mortgagees nearly always sell the property so as to procure a good title.

254. Unsatisfied Mortgages. If a mortgage for a certain amount covers certain properties of a debtor which, upon being sold, do not pay the whole claim of principal, interest and expenses, and the debtor has other property, the mortgagee can come on that other property until his full claim has been satisfied. If the debtor has no other property then, but may acquire it afterwards, the mortgagee may proceed against him by way of suit any time before the mortgage is outlawed and recover balance of principal, interest and costs.

255. The Personal Covenant. It must not be forgotten that every mortgage contains a Personal Covenant by the debtor to pay the creditor the sum named in the mortgage, together with interest, etc. The mortgage is simply a lien on the property as security for the payment of the stipulated sum. Therefore, if the debtor after giving the mortgage should sell the property it is not enough that the purchaser assume the mortgage, because the personal covenant still binds the original debtor. The mortgage should either be discharged, or a release under seal obtained from the creditor or mortgagee.

256. Prepayment of Mortgages. Mortgages may be prepaid five years from date, no matter for what length of time they may have been drawn, by simply paying three months' advance interest. If the mortgagee refuses to accept the money for principal and interest, together with three months' advance interest, he cannot collect any interest thereafter.

257. Transfer of Mortgages. Mortgages are not negotiable by indorsement, but may be transferred by assignment. The assignment is also an instrument under seal, and must be recorded at the same place the mortgage is registered.

258. Form of Assignment.

This Indenture made (in duplicate) the first day of September, in the year of our Lord one thousand eight hundred and ninety-six.

Between James William Brown, of the Township of Ancaster, in the County of Brant, Province of Ontario, student, of the first part, hereinafter called the "Assignor," and James Wilson, of the City of Hamilton, in the County of Wentworth, Province of Ontario, merchant, hereinafter called the "Assignee," of the second part;

Whereas, by a Mortgage dated on the first day of March, one thousand eight hundred and ninety-six, James Robert Manning, of the Township of Ancaster, County of Brant, Province of Ontario, farmer, and wife, did grant and mortgage the land and premises therein and hereinafter described to James William Brown aforesaid, his heirs, executors, administrators and assigns for securing the payment of One Thousand Dollars of lawful money of Canada, and there is now owing upon the said Mortgage the sum of One Thousand and Twenty-five Dollars;

Now this Indenture Witnesseth, that in consideration of One Thousand and Fifteen Dollars of lawful money of Canada, now paid by the said Assignee to the said Assignor (the receipt whereof is hereby acknowledged), The said Assignor Doth Hereby Assign and set over unto the said Assignee, his executors, administrators and assigns, All that the said before in part recited Mortgage, and also the said sum of One Thousand and Twenty-five Dollars now owing as aforesaid, together with all moneys that may hereafter become due or owing in respect of said Mortgage and the full benefit of all powers and of all covenants and provisos contained in said Mortgage. And also

full power and authority to use the name or names of the said Assignor, his heirs, executors, administrators or assigns for enforcing the performance of the covenants and other matters and things contained in the said Mortgage. AND the said Assignor DOTH HEREBY GRANT AND CONVEY unto the said Assignee, his heirs and assigns, ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Ancaster, in the County of Brant, Province of Ontario, containing by admeasurement One Hundred Acres, be the same more or less, being composed of Lot Number Twelve (12) in the Fourth (4) Concession of the Township of Ancaster aforesaid, TO HAVE AND TO HOLD the said Mortgage and all moneys arising in respect of the same and to accrue thereon, and also the said land and premises thereby granted and mortgaged TO THE USE of the said Assignee, his heirs, executors, administrators and assigns, absolutely forever; but subject to the terms contained in such Mortgage.

AND THE SAID ASSIGNOR for his heirs, executors, administrators and assigns doth hereby covenant with the said Assignee, his heirs, executors, administrators and assigns, THAT the said Mortgagee hereby assigned is a good and valid security, and that the said sum of One Thousand and Twenty-five Dollars is now owing and unpaid, AND that he has not done or permitted any act, matter or thing whereby the said Mortgage has been released or discharged either partly or in entirety; AND that he will upon request do, perform and execute every act necessary to enforce the full performance of the covenants and other matters contained therein.

IN WITNESS WHEREOF the said parties hereto have hereunto set their Hands and Seals.

Signed, Sealed and Delivered in the presence of D. E. POTTER. } JAMES WILLIAM BROWN.

RECEIVED on the day of the date of this Indenture from the said Assignee the sum of

WITNESS

COUNTY OF WENTWORTH, TO WIT: } I, Dexter Edgar Potter, of the City of Hamilton, County of Wentworth, Province of Ontario, student, make oath and say:

1. That I was personally present and did see the within Instrument and Duplicate thereof duly signed, sealed and executed by James William Brown one of the parties thereto.
2. That the said Instrument and Duplicate were executed at the City of Hamilton.
3. That I know the said party.
4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at Hamilton, in the County of Wentworth, this first day of September, in the year of our Lord 1896. } D. E. POTTER.

J. W. LAMOREAUX, *a Commissioner for taking affidavits in H. C. J.*, etc.

CHAPTER X.

PROPERTY.

259. Definition. The legal definition of property is "The right and interest which a man has in lands and chattels to the exclusion of others." A man purchases so many acres of land and thus acquires the possession and exclusive right to its use. He drains it, plants it with fruit trees, erects buildings upon it, and thus increases its value. The soil itself is not his, but he has acquired the right to its possession and use—a right that excludes all others from its use.

In the common language of the people property means the thing itself. Thus, a man buys a bay horse; he calls it his property, but in legal language it would be his property in the bay horse. That is, the right and title to its possession.

260. Division of Property. Property is divided into Personal and Real, sometimes called Real Estate.

1. Personal property includes all classes of property except lands and buildings. It consists of such things as are movable from place to place with the owner, as money, carriages, machinery, farm implements, live stock, book accounts, annual crops, nursery stock, good will and lease of property for a term of years.

2. Real property includes lands, buildings, trees growing upon the soil, and every source of wealth such as coal, gas, oil and minerals that may be buried in the soil.

Temporary buildings, not placed upon stone foundations nor nailed to the permanent buildings, trees and shrubs planted to be removed again, as nursery stock, do not become a part of the realty.

Also, temporary structures inside of the building, as counters, shelving, etc., attached by means of screws so they can be removed without injury to the property, do not become a part of the freehold.

261. Owner's Authority. As the owner has a right to the use and possession of the property to the exclusion of all others, he may expel, even by force if necessary, any other person from his premises. He can sell or deed it away, or give it to his heirs, pull down his buildings or otherwise destroy them, so long as he does not interfere with the rights of others.

If, however, a right of way has been sold to another person, as a lane or passage of ingress and egress to his property, he cannot build upon or otherwise obstruct or close up such passage over his lands.

262. Rights Over Other's Property. If he has property removed from the street or road, and pays another property holder between him and such street or road a certain sum for a right of way, as a lane, to reach his property, he acquires a perpetual right, which also passes to his successors, unless otherwise specified in the contract.

He may also acquirē other rights over his neighbor's property. For instance, he may have erected a fine residence that commands a pleasant view. His neighbor cannot afterwards erect a high fence that would obstruct that view, nor put up a building in such close proximity that it would darken or otherwise injuriously affect such residence, provided such residence be so erected for thirty years before such obstruction is attempted.

263. Joint Ownership is where two or more persons own a piece of property jointly. All have a right to it at the same time.

This class of ownership occurs where a syndicate of persons combine to purchase and hold for speculative or other purposes a portion of land or other property. Also when a person dies without a will, his hēirs have a joint interest.

Joint walls built by two parties on the dividing line between two properties would be an illustration of joint property. Neither one could take it down without the consent of the other.

264. Life Ownership is where a person has the use of property during his natural life. It may be acquired by gift or will. He cannot sell or mortgage such property. He cannot decrease its value by removing buildings, etc., or make any disposition of it at his death.

He may use and enjoy it for himself, or rent it to others and enjoy the proceeds, or he could sell or mortgage the use of it during his life-time.

265. Ownership by Possession. Ten years peaceful possession from the time that the real owner's right accrues gives the possessor a right to the property.

If the real owner should be an heir who was in a foreign country and did not know of the property falling to him, or if the heir were insane or suffering under any other similar disability, then the time would not commence to count until the heir's return or other disability were removed.

266. Dower is where the husband dies possessed of an estate and leaves no will. The wife has her one-third interest in the lands and tenements if there are children, and one-half if there are no children. A dower, of course, is only available after the husband's death.

267. Property in Trust is what has been conveyed to a person in trust for the use and benefit of another person. Such person is called a trustee. He is empowered by the conveyance to carry out its provisions, whatever they may be, as to collection of rents, sale of property, etc., and for investment of the funds. He cannot use the property for his own personal benefit. The person for whose benefit the trust is held cannot exercise any authority over it.

268. Sale of Personal Property. In the sale of personal property, as in all other contracts, the parties themselves must be competent to contract. The seller must have a valid title to the property sold; the property must be something legal to be handled, and the sale must be without fraud.

Selling personal property, which is still retained in possession, is binding as between the parties themselves, but is not binding against creditors or subsequent purchasers, unless a Bill of Sale is recorded. The price is either paid in money or promised to be so paid, for if it were paid in goods or service it would be a barter, and not a sale.

269. The Property Sold Must Exist. Jones sells Smith a certain horse at a certain price, but after the sale is concluded it is discovered that the horse is dead, both parties having been ignorant of the fact. There is no sale, even though the money had been paid.

270. Property may have a Potential Existence. The natural products of the soil, the increase of live stock or other property may be sold in advance. For instance: A farmer may sell his apple, peach or pear crop before the buds even began to show, or the wool clipped from his sheep the following spring, etc. They are not yet in existence, but they are possible; hence they may be sold.

271. Without Fraud. There must be no fraud, either through misrepresentation or through concealment of facts which ought to be known and which the other party cannot readily discover for himself.

272. The Limit of an Oral Sale. The sale of personal property for any amount under $40.00 may be made orally and be binding; but for $40.00 and upwards the contract must either be in writing, or a part of the goods delivered, or a part payment made. Any of these three things make the contract for the sale of personal property to any amount binding.

273. Penalty for Breach of Contract. If either party should violate such a contract as above, he would incur a penalty to the amount of damages the other party could prove he had suffered by the breach of contract, which amount would naturally be the price of the article. Illustration: A cattle buyer agrees to purchase ten head of cattle from a stock raiser and pays $20 to bind the bargain, and is to take them within ten days. After he goes away, he sees the market quotations show a great depression in foreign prices and he concludes not to carry out his contract. He cannot recover his $20, but the stock raiser can sue him for the balance of the purchase money.

274. Executed Sales. In sales that have been completed there must be a delivery of the property and a continued change of possession. Goods yet in charge of a railway or in a warehouse may be delivered by handing over the bill of lading or warehouse receipt. This is called a constructive delivery.

275. Bill of Sale. If the goods are not delivered, but still left in the possession of the former owner, a bill of sale must be registered at the office of the Clerk of the County Court in order to make such a sale legal and binding against creditors and subsequent purchasers.

276. Form of Bill of Sale.

This Indenture made the fourth day of April in the year of our Lord one thousand eight hundred and ninety-six, between James Smith, of the Town of Welland, in the County of Welland, and Province of Ontario, merchant, vendor of the first part, and Walter Winters, of the City of Toronto, County of York, and Province of Ontario, gentleman, the vendee of the second part.

Whereas the said party is possessed of the stock of dry goods and groceries and store and office fixtures hereinafter set forth, described and enumerated, and hath contracted and agreed with the said party of the second part for the absolute sale to him of the same, for the sum of six hundred dollars.

Now this Indenture Witnesseth, that in pursuance of the said agreement, and in consideration of the sum of six hundred dollars of lawful money of Canada, paid by the said party of the second part, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged), he, the said party of the first part, hath bargained, sold, assigned, transferred, and set over and by these presents doth bargain, sell, assign, transfer and set over, unto the said party of the second part, his executors, administrators and assigns, All Those the said dry goods and groceries and store and office fixtures, as per inventory hereunto attached and marked "A."

And all the right, title, interest, property, claim and demand whatsoever, both at law and equity, or otherwise howsoever, of him the said party of the first part, of, in, to, and out of the same and every part thereof.

To Have and to Hold the said hereinbefore assigned dry goods, groceries and store and office fixtures and every of them and every part thereof, with the appurtenances, and all the right, title and interest of the said party of the first part thereto and therein, as aforesaid, unto and to the use of the said party of the second part, his executors, administrators and assigns, to and for his sole and only use forever.

And the said party of the first part doth hereby, for his heirs, executors, and administrators, covenant, promise and agree with the said party of the second part, his executors and administrators, in the manner following, that is to say: That he, the said party of the first part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned dry goods, groceries and store and office fixtures, and every part thereof; and that the said party of the first part, now hath in his good right to assign the same unto the said party of the second part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; and that the said party here, of the second part, his executors, administrators and assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, possess, and enjoy the said hereby assigned goods and fixtures and every of them, and every part thereto, to and for his own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by him the said party of the first part, or any person or persons whomsoever, and that free and clear, and freely and absolutely released and discharged, or otherwise, at the cost of the said party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges, and encumbrances whatsoever.

And moreover, that he the said party of the first part, and all persons rightfully claiming, or to claim any estate, right, title or interest of, in, or to the said hereby assigned goods and fixtures and every of them, and every part thereof, shall and will from time to time, and at all times hereafter upon every reasonable request of the said party of the second part, his executors, administrators or assigns, but at the cost and charge of the said party of the second part, make, do and execute, or cause or procure to be made, done and executed, all such further acts, deeds and assurances for the more effectually assigning and assuring the said hereby assigned goods and fixtures unto the said party of the second part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said party of the second part, his executors, adminsitrators or assigns, or his counsel shall be reasonably advised or required.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of
Charles Summers.

James Smith. (L.S.)
Walter Winters. (L.S.)

Affidavit of purchase as to the sale being bona-fide for value :

COUNTY OF YORK, TO WIT: I, Walter Winters, of the City of Toronto, in the County of York, the vendee in the foregoing Bill of Sale named, make oath and say :

That the sale therein made is bona-fide, and for good consideration, namely, six hundred dollars, and not for the purpose of holding or enabling me, this deponent, to hold the goods mentioned therein against the creditors of the said bargainer.

SWORN before me at Toronto, in the County of York, this 4th day of April, A.D. 1896. WALTER WINTERS.

JAMES BROWN, *a commissioner for taking affidavits in H. C. J.*

Affidavit of witness proving the signing, sealing and delivery of the Bill of Sale :

COUNTY OF YORK, TO WIT: I, Charles Summers, of the City of Toronto, in the County of York, make oath and say :

That I was personally present, and did see the within Bill of Sale duly signed, sealed, and executed by James Smith and Walter Winters, the parties thereto. And that I this deponent am a subscribing witness to the same. And that the name Charles Summers, set and subscribed as a witness to the execution thereof, is of the proper handwriting of me this deponent, and that the same was executed at the City of Toronto.

SWORN before me at the City of Toronto, County of York, this 4th day of April, 1896. CHARLES SUMMERS.

JAMES BROWN, *a commissioner for taking affidavits in H. C. J.*

277. Sales on Trial. When articles are purchased on trial at a certain price they must be rejected before the time expires if they do not suit, or the sale is complete and the party bound to keep them.

278. Guaranteeing Machinery. The descriptions of machinery as to manner and excellence of work, etc, that appear in newspaper advertisements and circulars cannot be made a binding guarantee to protect the purchaser. To have an effective guarantee of excellence, or that the machine or instrument will do what is claimed for it in the circulars it must either be in a definite form of guarantee, or in a written or typewritten letter. The courts allow for a good deal of what may be called exaggeration in mere advertisements, hence as an instrument or machine may always be tested before being paid for there is not much chance afterwards to recover damages for misrepresentation except on a written guarantee.

279. Sales by Sample or Description are made on the warranty that the goods when delivered will correspond in kind and quality with the description given or sample shown, and if such is not the case there is no binding sale.. The article must not be retained, or used. If the seller was to remove the article, if unsatisfactory, the notice should be given as per agreement, and the article cared for until removed. If a cumbersome machine were left an unreasonable time, it must still be cared for, but storage could be charged and collected before delivering the property.

280. Selling Stolen Goods does not give them a good title in the hands of an innocent purchaser for value, as in the case with the promissory note. They can be re-taken wherever found.

281. Conditional Sales are what have been referred to under the head of a "Lien Note." In selling sewing machines, organs, pianos, etc.,

it is common to sell them on the "instalment plan," the buyer obtaining the possession and use, but the seller retaining the ownership until the article is paid for.

In all such cases the manufacturer's name and address must be shown on the article or a copy of the lien filed at the office of the County Court Clerk, and also a copy of the lien left with the purchaser. The fee for filing the lien is ten cents.

On live stock, household furniture, waggons, etc., this is not required, the lien being valid without either the name being on the article or the lien filed. (See section 150.)

282. Sale of Book Accounts is effected by assignment. The following brief instrument is sufficient:

> *For value received, I hereby assign to (person's name) the accompanying accounts and claims against the persons whose names are enumerated (enumerate the names and amounts).*
>
> (*Signed*) J. WINTERS.

283. Goods Stopped in Transit. Goods not yet paid for, having been shipped to the purchaser, but before their delivery word being received of the purchaser's insolvency, may be stopped by ordering the company in whose possession they are not to deliver them, providing the bill of lading has not been delivered.

If it should turn out, however, that the purchaser is not insolvent, then the seller who unlawfully stops the goods in transit may be required to indemnify the purchaser's loss, or to deliver the goods and pay damages sustained by the delay in delivery.

284. Goods Sold by Order. With all implements and machinery sold by order, the party giving the order should require a duplicate of the order to be left with him. The law does not compel an agent to leave a copy of the order with the person giving the order, but the person himself has the right and the *power* to *demand* it or refuse to give an order. Care should be taken to see that the copy reads exactly like the orignal.

285. Auction Sales. At every auction sale the "terms of sale" are always well advertised. If nothing were said about the terms they would be cash.

The proprietor may have various conditions, as well as the terms of credit announced by the auctioneer before the sale commences, such as, that the first bid must be above a certain sum named, and even the amount to be advanced at each bid, an underbidder, and a certain amount to be deposited at the time of sale.

286. The Auctioneer is the agent for both the seller and buyer; hence binds both by his acts. When he is selling he is acting as agent for the seller, but in the act of "knocking down" the article to a certain bidder he is the agent of the purchaser, and in the memorandum of the sale he makes in his book he acts for both parties and binds both. Auctioneers' licenses are granted by counties and cities, who may charge a fee and also give special rules for their governance.

287. Sale of Real Estate. There are two kinds of sales, viz. Executed and Executory.

1. EXECUTED SALES are those where the sale has been completed by the payment of the money and the execution and delivery of the deed of conveyance.

2. EXECUTORY SALES are those where possession has been passed by agreement for sale, but the title does not pass until the price has been paid in full.

288. Agreement to Sell or Buy Real Estate, unless in writing, signed by the contracting parties or their duly authorized agents, is not binding. An oral contract made, even if money be paid on it to "bind the bargain," does not bind either party to buy or sell.

When for any reason a bargain is made for the sale of real estate that cannot be executed immediately, a memorandum of the agreement should be written out, and signed by the parties, or their agents authorized, in writing. This makes the contract binding, even though nothing be paid down. An ordinary agreement would be sufficient, but in the following section the usual form with seal is used. It does not convey a title, but is simply a binding promise to convey.

289. Form of Agreement for Sale. This agreement for sale of land may be proved by affidavit of witness and registered by the purchaser.

Articles of Agreement made this first day of June in the year of our Lord one thousand eight hundred and ninety-six,

BETWEEN James Gray, of the Township of Woodhouse, in the County of Norfolk, Province of Ontario, mechanic, of the first part;

And William Franklin, of the Township of Woodhouse aforesaid, farmer, of the second part.

WHEREAS the said party of the first part has agreed to sell to the party of the second part, and the party of the second part has agreed to purchase of and from the said party of the first part, the lands, hereditaments and premises hereinafter mentioned, that is to say:

ALL AND SINGULAR that certain parcel or tract of land, being composed of Lot Number Ten on the Fifth Concession of the Township of Woodhouse aforesaid, containing by admeasurement fifty acres more or less.

TOGETHER with all the privileges and appurtenances thereto belonging at or for the price or sum of two thousand dollars of lawful money of Canada, payable in manner and on the days and times hereinafter mentioned, that is to say:

The sum of Four Hundred Dollars to be paid at or before the sealing of this agreement; the remaining One Thousand Six Hundred Dollars to be due and payable in four equal annual instalments, Four Hundred Dollars each with interest on the unpaid principal at five per cent. per annum, payable with each instalment. The first of such instalments of principle and interest to be due and payable one year from the date of this agreement.

Now it is hereby agreed between the parties aforesaid in manner following, that is to say: The said party of the second part, for himself, his heirs, executors and administrators, *doth covenant promise and agree* to and with the said party of the first part, his heirs, executors, administrators and assigns, that he or they shall and will well and truly pay or cause to be paid to the said party of the first part, his heirs, executors, administrators and assigns, the said sum of money above mentioned together with the interest thereon, at the rate of five per cent. per annum, on the days and times and in

manner above mentioned: And also shall and will pay and discharge all taxes, rates and assessments wherewith the said land may be rated or charged from and after this date.

IN CONSIDERATION WHEREOF and on payment of the said sum of money with interest thereon as aforesaid, the said party of the first part doth for himself, his heirs, executors, administrators and assigns, *covenant promise and agree* to and with the said party of the second part, his heirs, executors, administrators, or assigns, to convey and assure or cause to be conveyed and assured to the party of the second part, his heirs, or assigns, by a good and sufficient deed in fee simple.

ALL THAT the said piece and parcel of land above described, together with the appurtenances thereto belonging or appertaining, freed and discharged from all dower or other encumbrances, but subject to the conditions and reservations expressed in the original grant thereof from the Crown, and such deed shall be prepared at the expense of the said party of the first part, and shall contain the usual statutory covenants for perfect title and quiet enjoyment.

AND ALSO shall and will suffer and permit the said party of the second part, his heirs and assigns, to occupy and enjoy the same until default be made in payment of the said sum of money or the interest thereof or any part thereof, or the day and time and manner hereinbefore mentioned, SUBJECT NEVERTHELESS to impeachment for voluntary or permissive waste.

And it is expressly understood that *time* is to be considered the essence of this agreement, and unless the payments are punctually made at the time and in manner hereinbefore mentioned, the said party of the first part shall be at liberty to resell the said land.

IN WITNESS WHEREOF the said parties to these presents have hereunto set their hands and seals the day and year first above-mentioned.

In presence of } JAMES GRAY.
J. W. LEITH. } WILLIAM FRANKLIN.

290. Deeds. There are various kinds of deeds in common use, as Warranty Deed with full covenants, Warranty Deed with abbreviated covenants, Quit Claim Deed, a Deed-Poll, and Trust Deed.

291. Warranty Deed with full covenants is one that guarantees a perfect title and quiet enjoyment of property to the purchaser and his heirs and assigns after him. The covenants are all written out at length but owing to the expense in registering they have been legally "boiled down" so as to express all the covenants in fewer words and thus called a Warranty Deed with abbreviated covenants. That is the form shown in this work, section 259.

292. Quit Claim Deed is made by a person who does not hold a perfect title to a property in favor of some one that has a claim to the property. It is much like an ordinary deed without the covenants. It conveys only the party's interest in the property without any guarantee of title. It would be used when a mortgagee purchases the land already mortgaged to him, the covenants being already made in his favor in the mortgage. It would also be used when heirs in common of an estate quit their claim to one another and to executors.

293. Deed-Poll is a deed made by one person, as in case of a Sheriff Deed.

294. Trust Deed is one made to a person called a trustee, conveying property to him to be held in trust for some other person.

295. Form of Statutory Deed. The following is the short form or Statutory or Warranty Deed with abbreviated covenants:

This Indenture made (in duplicate) the first day of April, in the year of our Lord one thousand eight hundred and ninety-six, IN PURSUANCE OF THE ACT RESPECTING SHORT FORMS OF CONVEYANCES.

BETWEEN James Smith, of the Township of King, County of York, and Province of Ontario, merchant, of the first part, and

Mary Jane Smith, wife of the party of the first part, of the second part, and Walter Winters, of the Township of King, County of York, and province aforesaid, yeoman, of the third part.

Witnesseth that in consideration of Three Thousand Dollars ($3,000) lawful money of Canada, now paid by the said party of the third part to the said party of the first part (the receipt whereof is hereby acknowledged), he, the said party of the first part, DOTH GRANT unto the said party of the third part, in fee simple,

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of King, County of York, and Province of Ontario, containing by admeasurement one hundred acres, be the same more or less, being composed of the South part of lot Number 19 in the 7th Concession of the township of King aforesaid.

TO HAVE AND TO HOLD unto the said party of the third part, his heirs and assigns, to and for his and their sole and only use FOREVER, SUBJECT NEVERTHELESS, to the reservations, limitations, provisos and conditions expressed in the original GRANT made thereof from the Crown.

(NOTE.—*The five following items are the covenants that make a Warranty Deed of this.*)

The said party of the first part COVENANTS with the said party of the third part, THAT he has the right to convey the said lands to the said party of the third part, notwithstanding any act of the said party of the first part.

And that the said party of the third part shall have quiet possession of the said lands, free from all encumbrances.

And the said party of the first part COVENANTS with the said party of the third part, that he will execute such further assurances of the said lands as may be requisite.

And the said party of the first part COVENANTS with the said party of the third part that he has done no act to encumber the said lands.

And the said party of the first part RELEASES to the said party of the third part, ALL HIS CLAIMS upon the said land.

And Mary Jane Smith, the party of the second part, hereby bars her dower in the said lands.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals.

Signed, Sealed and Delivered in presence of CHARLES SUMMERS. } JAMES SMITH. MARY JANE SMITH.

COUNTY OF YORK, TO WIT: } I, Charles Summers of the Township of King, County of York, and Province of Ontario, gentleman, make oath and say:

1. That I was personally present and did see the within instrument and duplicate thereof duly signed, sealed and executed by James Smith and Mary Jane Smith, two of the parties thereto.

2. That the said instrument and duplicate were executed in the Township of King.

3. That I know the said parties.

4. That I am a subscribing witness to the said instrument and duplicate.

SWORN before me in Toronto, in the County of York, this fourth day of April, A.D. 1896. } CHARLES SUMMERS.

JOHN H. WILLIAMS,
A commissioner for taking affidavits in the County of York.

296. Who Should Sign. Any person who has anything yet to do should sign the deed. In the deed shown here, the purchaser paid the whole purchase price hence having nothing further to do did not sign. If, however, there were a mortgage or claim that he had covenanted to pay off or to allow a portion of the property to be used as a lane, etc., then he would be required to sign so as to bind himself.

297. Deed Subject to Mortgage. Where property is sold subject to a mortgage, the purchaser agreeing to pay off the mortgage as part of the purchase money, the mortgage is referred to after the descriptions of the property, or after the clause ending with the words "subject to the reservations, limitations, provisions and conditions expressed in the original grant from the Crown." Words like the following would answer: "Subject, however, to a certain mortgage made by the parties of the first and second part (if wife signed, too, giving name and date), securing the payment of (giving amount and interest) which mortgage the party of the third part agrees to pay, satisfy and discharge and save harmless therefrom the party of the first part." Also after three other clauses on the deed the following, modifying words would be used, "except as aforesaid."

298. A Deed of Gift of property from father to son, etc., is usually drawn in the parts that relate to the consideration, "Witnesseth that in consideration of the natural love and affection and the sum of one dollar," thus giving both a good and valuable consideration.

299. Writing Deeds. Any person may write a deed who is capable of describing the property. The Christian names of the various parties must all be given in full. The deed should be written in duplicate, one for registration and one retained by the purchaser. There must be a witness who makes an affidavit that he saw the instrument signed. See form above. The affidavit may be made before a Registrar, Deputy Registrar, Supreme or County Judge, a Commissioner for taking affidavits, or a Magistrate.

300. Delivery. An agreement or deed may be signed and sealed, but it has no binding effect on the maker until it is delivered into the hands of the parties in whose favor they are drawn.

301. Registration. All instruments respecting titles of real estate should be registered in the Registry Office of the County in which the property is situate, as all documents take precedence according to priority of registration.

Also, if a deed or mortgage should be lost or destroyed a duly certified duplicate can be had at any time from the Registrar for a small fee. For twenty-five cents the title of any property may be examined and copies taken from every mortgage or agreement respecting it.

If the Registrar makes a certified copy of any document, he is entitled to a reasonable fee therefore. The fees for registering are: $1.40 for the first 700 words or under, and fifteen cents for each additional hundred from 700 to 1,400, and ten cents for each additional hundred over 1,400.

As stated above, documents take precedence according to priority of registration. For instance: two mortgages made on the same property, one dated June 10th, 1895, and not registered until June 30th, 1895, and another dated June 29th, and registered June 29th, 1895, the latter one, being registered first, would have first claim on the property and would have to be satisfied before the other one, although it was written second. It is desirable that all documents should be registered as soon as possible after their execution.

302. Corporation Deeds, Etc. When land is conveyed to a corporation it is made to "their successors" instead of their heirs, and to their "successors in office," where a conveyance is made to trustees. Corporation deeds do not need the affidavit of the witness, as the affixing of the corporate seal of the corporation or company is sufficient evidence of genuiness when signed by their chief officers.

303. Searching Titles. (1) Search the Court's Registry Office or get an abstract from the Registrar to see if there are any mortgages, liens or dowers against it. (2) Search the office of the Sheriff of the County to see if there are any judgments recorded against the owner. (3) Search the town or city or County Treasurer's office to see if there are any unpaid taxes against the property.

304. Form of Quit Claim Deed. THIS INDENTURE, made (in duplicate) the first day of April, in the year of our Lord one thousand eight hundred and ninety-six,

BETWEEN James Smith of the Township of Stamford, County of Welland, Province of Ontario, merchant, of the first part, and Mary Jane Smith, wife of the party of the first part, of the second part, and Walter Winters of the Township of Stamford, County of Welland, Province aforesaid, yeoman, of the third part.

Witnesseth that the said party of the first part, for and in consideration of the sum of three thousand dollars (3,000) of lawful money of Canada, to him in hand paid by the said party of the third part, at or before the sealing and delivery of these presents (the receipt whereof is hereby acknowledged). Has granted, released, and quitted claim, and by these presents doth grant, release and quit claim unto the said party of the third part, his heirs and assigns, all estate, right, title, interest, claim and demand whatsoever, both at law and in equity or otherwise howsoever, and whether in possession or expectancy of him the said party of the first part, of, in, to or out of

ALL AND SINGULAR that certain parcel or tract of land premises situate, lying and being in the Township of Stamford, in the County of Welland, Province of Ontario, containing by admeasurement one hundred acres, be the same more or less, being composed of the south part of Lot No. 19, in the 7th Concession, in the Township of Stamford aforesaid.

To have and to hold the aforesaid land and premises, with all and singular the appurtenances thereto belonging and appertaining unto and to the use of the said party of the third part, his heirs and assigns forever.

Subject Nevertheless, to the reservations, limitations, provisos and constitutions expressed in the original grant thereof from the Crown.

And Mary Jane Smith, the said party of the second part, hereby bars her dower in the said land.

In witness whereof, the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered in presence of CHARLES SUMMERS, } JAMES SMITH, MARY JANE SMITH,

Received on the day of the date of this indenture, the sum of Three Thousand Dollars ($3,000).

Witness: CHARLES SUMMERS. } JAMES SMITH.

Affidavit of witness to the execution.

COUNTY OF WELLAND TO WIT: } I, Charles Summers, of the Township of Stamford, County of Welland, Province of Ontario, gentleman, make oath and say:

1. That I was personally present, and did see the within Instrument and the Duplicate thereof duly Signed, Sealed and Delivered by James Smith and Mary Jane Smith, two of the parties thereto.

2. That the said Instrument and Duplicate were executed in the Township of Stamford.

3. That I personally know the said parties.

4. That I am a subscribing witness to said Instrument and Duplicate.

Sworn before me in Stamford, County of Welland, Province of Ontario, this fourth day of April, A.D. 1896. } CHARLES SUMMERS.

JOHN H. WILLIAMS, *a commissioner for taking affidavits.*

CHAPTER XI.

MARRIED WOMEN'S PROPERTY RIGHTS.

305. An unmarried woman, either a spinster or a widow, is as free to contract as a man.

A married woman in Ontario now may contract in regard to her own property just as freely as a man. She can buy and sell, engage in trade and commerce, sue and be sued in her own name, and her separate property only be liable for her debts.

A woman married before the 4th May, 1859, may hold the property that had not then been reduced to the possession of her husband, whether belonging to her before marriage or acquired by her after marriage, entirely free from his debts and obligations contracted since that date.

A woman married between May 4th, 1859, and March 2nd, 1872, may hold all her separate property whether belonging to her before marriage or acquired by her since, entirely free from any debts and control of her husband. This does not apply to property received from her husband after marriage.

A woman married since the 2nd of March, 1872, may hold all her own separate property free from the debts and obligations or control of her husband, and free from any estate therein of her husband during her lifetime.

A woman married on or since the first day of July, 1884, may not only hold her own separate personal and real property, but also may dispose of her personal and real property without even the consent or signature of her husband.

Any shares or stock in any Bank, Stock or Loan Company, or any debentures standing in the name of a woman married since July 1st, 1884, are deemed her own separate property, unless otherwise shown ; and she has a right to all dividends and profits arising therefrom, and to transfer the same without the concurrence of her husband.

But if a married woman should purchase such shares or stocks with her husband's money, without his consent, the husband may procure an order from the court to have such investments and the dividends thereof transferred to him.

If, also, a married woman made such investments with her husband's money, to defraud his creditors, such investments may be followed by the creditors and taken to satisfy their claims.

A married woman has the same remedies for the protection of her separate estate against her husband that she has against other parties.

In any proceeding concerning their property, the husband and wife are competent to give evidence against each other.

A married woman is liable after her marriage for the debts she contracted before marriage, and for all contracts entered into or wrongs committed before marriage, and all sums recovered against her for such contracts or cost incurred therefor are payable out of her separate estate

306. The Husband's Liability. The husband is liable for the debts of his wife contracted and for all contracts entered into and wrongs committed by her before marriage, and for wrongs committed by her after marriage to the extent of the property he has come into possession of through his wife.

A husband and wife may be sued jointly in respect of any such debt or liability contracted or incurred by the wife, as mentioned in previous paragraph, but if the plaintiff fails to establish the husband's liability in respect to the property he may have acquired through his wife, the husband will obtain judgment for the costs of defence, whatever may be the result of the action against the wife. If the plaintiff succeeds in establishing the husbands's liability, he will obtain joint judgment against the husband personally, and against the wife as to her separate property, and if the husband's liability does not extend to the amount of the claim or damages, the residue will be against the wife's separate estate.

307. Wife not Liable for Family Debt. For instance, a wife keeping boarders and buying goods on credit for the general family expense does not render her separate estate liable for the debts. The husband and the husband's property only are liable. If the merchant wishes to render the wife liable he must make the contract with her by having her purchase in her own name, or to guarantee the payment.

A married woman, however, engaged in business in her own name, any goods which her husband orders and she accepts are chargeable against her, the husband being merely an agent.

308. Mortgage and Wife's Property. The husband cannot mortgage any goods that belong to the wife, obtained either by purchase with her own money, or gifts from other persons. The wife need not sign a chattel mortgage unless she owns part of the goods, and desires to mortgage them.

309. Wife's Future Property not Liable. A wife indorsing or signing notes with her husband renders liable whatever property she has in possession at the time or may acquire afterwards. But if she has no separate estate, that is no property in possession at *that time*, she does not render liable any property that she may subsequently come in possession of. Business firms must give this feature of the law of property special attention, for it is not generally known, even among the lawyers. For instance, a wife may not have any property in her own name at present, but is rich in prospect, knowing that she will inherit a fortune in the near future; she may sign notes or indorse paper, but this property coming to her afterwards cannot be touched for such obligations.

310. Order of Protection. Any married woman having a decree for alimony against her husband, or being for any legal cause separated from him, either through his cruelty, insanity, imprisonment in the Provincial Penitentiary or in a gaol for a criminal offence; or whose husband who, through habitual drinking or profligacy, neglects or refuses to support her, may obtain an order of protection, entitling her to the earnings of her minor children, entirely free from the debts and obligations of her husband and from his control.

When the married woman resides in a town or city where there is a Police Magistrate, the order should be obtained from him, but when there is no Police Magistrate where she resides then the order will be given by the County Judge.

311. Dying Intestate. A married woman dying intestate and leaving children, the husband is entitled to one-third and the balance to the children. Where there are no children the husband is entitled to one-half of all the property.

312. Selling Her Separate Estate. A married woman may, during her lifetime, sell her separate estate, even without her husband signing the deed. It is still customary, however, to endeavor to have the husband sign also, but it is not legally necessary.

A married woman now may also sell her separate property direct to her husband, or the husband direct to the wife. Formerly it was necessary to make the transfer through a third party, but such is not now necessary for real estate. For personal property it is still necessary to make the transfer by Bill of Sale through a third party, in order to pass from husband to wife or from wife to husband.

CHAPTER XII.

GUARANTY AND SURETYSHIP.

313. Guaranty or Suretyship is a promise by one person to another to answer for the debt, default or miscarriage of a third party. According to the Statute of Frauds already mentioned, all such promises must be in writing in order to be binding. An oral guarantee is worthless in such cases.

The utmost care must be observed in regard to this feature of our laws. In many cases nothing but a simple recommendation is intended by the person making it, while a regular guarantee is understood by the other party.

These promises usually fall under one or other of two forms: An absolute promise and a conditional promise. By a particular wording of the promise it is only a conditional promise to pay in case the other party fails to do so, and then it must be in *writing* in order to be binding. This is a case of answering for the debt or default of the debtor and made by mere word of mouth is worthless. But by a slight change in the wording it becomes an absolute promise to pay the debt himself, in which case the guarantor actually take the place of the debtor. In case of a debt just being created as, for instance, buying goods at a store, this promise is binding if only *oral*. A few examples will make the distinction clear.

314. Example of Binding Promise. A person goes with his hired man to a store and tells the merchant to give this man goods to a certain amount, and "I will see it paid," or "I will be responsible." This is virtually telling the merchant to charge the goods to him direct, and consequently is not "answering for the debt of another," but is an absolute promise to pay it himself. Such a guarantee does not need to be in writing to be binding. It is the same as saying, "Charge the goods to me," or "I will pay for them." It is his debt, although for the benefit of his servant. Such a promise made by word of mouth is binding.

In this case the merchant charges the goods to the person who gave the order, although it is expected that the person receiving the goods will pay for them. But if he does not do so the merchant looks to the guarantor only, because he is the principal debtor and not a mere surety. His oral and verbal authority to charge the goods to him is sufficient to bind him, but his verbal guarantee would not.

315. Promise that does not Bind. An example of what may be called a conditional promise: Supposing he were to say to the merchant "Give this man goods to such an amount, and if he does not pay you by such a time I will myself," or "send the bill to me." This would be worthless spoken by word of mouth, for it is answering for the debt of another, and utterly void unless put in writing. Even if there were witnesses it would still be worthless. It leaves the debt on the other party, the guarantor only agreeing to pay in case the debtor fails to do so. Every form of wording that may be used where this is the case is utterly useless, unless put in writing.

Suppose again that Smith owes Brown, and Brown tells Jones that if he will become responsible for the debt he will let it stand, and Jones replies, "all right, give him time, and if he does not pay you I will," the promise would not be binding unless put in writing.

316. Letters of Recommendation. Great care should be taken in the wording of a letter of recommendation where financial obligations are to be created or business relations formed, if nothing but a simple recommendation is intended. All such phrases as "He is good for them," or naming a certain amount and saying, "He would be safe to that extent," etc., would constitute a guarantee. The liability may be evaded by modifying such expressions by, "I would regard him as safe" for such an amount, or "I think you would be entirely safe in giving him credit" for such an amount, or "I would trust him," or "I think you could trust him," or "he has always paid me," etc. With any such modifying phrase very much may be said to the credit of a worthy person without being held as a surety. Such words spoken by word of mouth would not incur any liability except it could be shown there was an element of fraud in them, that they were intended to deceive. It is not safe to use them even orally without the modifying terms here mentioned.

317. Guaranteeing Negotiable Paper has already been considered in section 186, which see.

318. The Consideration. Guarantee is a contract, and like other contracts requires a consideration to support it. When a written guaranty is given it is better to express the consideration as in the following forms. It may be nominal, as one dollar, or the actual consideration may be expressed as in section 321.

319. Guarantee of Debt Already Incurred.

In consideration of One Dollar, the receipt of which is he eby acknowledged, I guarantee that the debt of One Hundred and Twenty-five Dollars now owing to James Forsyth by Henry Johnson shall be paid at maturity.

Forest, Aug. 11th, 1896.

WILLIAM JENNINGS.

This guaranty might be addressed to James Forsyth in the form of a letter, and closed with "yours respectfully," etc., or made as above.

320. Guaranteeing Future Purchases. This is what would be called a "continuing guarantee."

TORONTO, August 31st, 1896.

In consideration of One Dollar, I hereby guarantee the payment of all goods purchased by John Dillon from Alfred Freeman during the remainder of the year 1896, said purchases not to exceed One Hundred and Fifty Dollars.

WALTER JONES.

This guarantee might be exhausted in a single purchase, or during the first month, or by numerous purchases during the whole period, to January 1st, 1897.

321. Guaranteeing a Horse.

BERLIN, August 31st, 1896.

In consideration of Seventy-five Dollars for a bay horse, I hereby guarantee him to be only four years old, sound, quiet in harness and true to draw.

JAMES SMITH.

322. Guarantee Insurance. There are companies that guarantee the honesty and fidelity of persons engaged in responsible positions as clerks, bookkeepers or managers in any moneyed institution or corporation.

A company receiving a clerk under such guarantee must not change his employment from that for which his fidelity was guaranteed, as that would change the contract and release the guarantor.

Private individuals also sometimes guarantee the fidelity of a clerk or other employee.

323. Form of Fidelity Bond.

Know all Men by these Presents, That we, Henry A. Stone, of the Town of Welland, in the County of Welland, Province of Ontario, bookkeeper; Robert E. Duff, of the Township of Pelham, in the said County, farmer, and Edmund Miller, of the Township of Bertie, in the said County of Welland, farmer,

Are held and firmly bound to the Ontario Silver Co. (Limited), hereinafter called the Company, in the sum of Three Thousand Dollars to be paid to the said Ontario Silver Co. (Limited) and their assigns, for which payment, well and truly to be made, we bind ourselves and every of us, and every two of us, and every of our heirs, executors and administrators, and the heirs, executors and administrators of every two of us, jointly and severally, by these presents, sealed with our respective seals.

Dated this thirty-first day of August, one thousand eight hundred and ninety-six.

Whereas, the said Company have agreed to take the said Henry A. Stone into their service as bookkeeper, or to act in any such other capacity for the Company as Leonard McGlashan, of the village of Stonebridge, manager of the said Company, or the Board of Directors of the said Company, may from time to time require, or appoint, or as may

be from time to time agreed upon with the said Henry A. Stone, upon the said Henry A. Stone and the said Robert E. Duff and Edmund Miller as sureties for him, entering into the above written bond or obligation for the fidelity of the said Henry A. Stone while in such employment as aforesaid.

AND WHEREAS, it is intended and agreed that this security shall be in force during the whole of the time during which the said Henry A. Stone shall be in the service of or employed by the said Company in such capacity, or in any other capacity.

Now the conditions of the above written Bond or Obligation is such that if the said Henry A. Stone shall at any time hereafter, so long as he shall be in the service or employment of the said Company, as clerk or in any other capacity, faithfully, honestly and diligently perform and discharge the said service and all the duties which may devolve upon the said Henry A. Stone as such clerk or otherwise as aforesaid, and shall whenever required, duly account to the said Leonard McGlashan, or other person or persons for the time being acting as Manager of the said Company, or to the said Board of Directors of the said Company, for all money, goods and property whatsoever for or with which the said Henry A. Stone may be in any wise accountable for or chargable to, or by him or them as such clerk, or otherwise as aforesaid, and shall, whenever required, duly pay or deliver all such moneys, goods and property to him or them, or in case the said Henry A. Stone, Robert E. Duff or Edmund Miller, or any of them, their or any of them, their or any of their heirs, executors or administrators shall, when required, make satisfaction to the said Leonard McGlashan, or such other person or persons for the time acting as Manager of the said Company, or the Board of Directors of the said Company, for all such moneys, goods or property which may be lost, misplaced or unlawfully disposed of by the said Henry A. Stone, or shall not be duly accounted for, or paid or delivered as aforesaid, and shall keep the said Leonard McGlashan, or such other person or persons aforesaid of the said Company indemnified against all losses, damages, and expenses whatsoever by reason or in consequence of any such act or default of the said Henry A. Stone.

And so that any forgiveness or forbearance on the part of the said Leonard McGlashan, or the person or persons aforesaid, or the said Company towards the said Henry A. Stone in respect of his failure or neglect to perform such services or duties, or make such payments as aforesaid shall not in any way release or exonerate the said Robert E. Duff or Edmund Miller, either of them, their or either of their respective heirs, executors or administrators in respect of their or his liability under the above written bond, and so also that the said Robert E. Duff or Edmund Miller, or their respective heirs, executors or administrators shall not separately or individually be liable to pay more than Fifteen Hundred of the above written Bond.

Then the above written Bond or Obligation shall be void and of no effect, or otherwise shall be and remain in full force and virtue.

Signed, Sealed and Delivered, in the presence of CURTIS AUGUSTINE.

HENRY A. STONE, (L.S.)
ROBERT E. DUFF, (L.S.)
EDMUND MILLER. (L.S.)

324. Creditor's Obligations to Guarantor.

1. To give notice of default within reasonable time after it is known.

2. To give the guarantor, as soon as he has made good the default, all his rights against the debtor. If any property of the debtor or other collateral security is in his hands, to turn it over to the guarantor.

The guarantor, after making good the default, takes the place of the creditor, and may recover from the debtor not only the original debt, but also all expenses and costs incurred.

325. Discharge of Guarantor or Surety.

1. If the guarantee is given for a certain specified time, then at the expiration of that time the guarantor is released.

2. If the guarantor gives notice that he will not be surety after a certain date, he is then relieved from any default after that time. Of course this would not apply on a negotiable instrument not yet due, or any contract the time for which to be executed had not yet expired.

3. Any alteration of the agreement without his knowledge or consent will discharge the surety. The erasure or interlineation of any words that have the effect of changing the liability creates a new and different agreement from the one which the surety had guaranteed. Such alterations can only be legally made by the surety giving his consent in writing.

4. An extension of time given by the creditors to the debtors by *valid agreement* releases the surety unless he gives his consent. A mere promise to extend the time would not release the surety, because the promise would not be legally binding, and if the surety refused to allow the extension the creditor could sue the debtor or accept payment from the surety and invest him with all his rights and remedies.

In order to be a discharge to the surety, the agreement with the debtor must be one that *binds* the creditor to an extension of time for payment, so that he is prevented from proceeding against the debtor himself during that time, and which consequently prevents the surety from exercising his right of paying the creditor and suing the debtor upon the claim.

5. Fraud, either in respect to the contract itself, or some fraud or deception practiced by the creditor himself or by the debtor with the creditor's consent, by which the surety was induced to guarantee the debt, releases the surety from his obligation.

326. Rights Between Sureties. When several sureties unite in a guaranty, each one is required to contribute equally to the satisfaction of the claim should the debtor fail to make payment. If one were found to be insolvent the others would be bound to bear the burden equally. In case one paid all he could recover from his co-sureties their equitable share of the loss.

This equitable distribution of the liability holds unless there is an agreement between the sureties that changes it. If the last surety, as with indorsers on a note, were to add to his signature, "surety for the above names," or words of similar import, he would not become a co-surety, but would merely be liable in case the others fail.

The respective liabilities among indorsers on a promissory note has been noticed in that chapter.

CHAPTER XIII.

PRINCIPAL AND AGENT.

327. Agency is where one person transacts business for another. The errand boy, the clerk, the conductor, engineer, switchman, the commission merchant and the farm laborer are all agents as much as those engaged in selling machinery or fruit trees on commission or salary. In all branches of business where one person acts for another there is an agency.

328. The Principal is the one who engages another to act or do business for him. Anyone competent to contract may act as principal, and he may delegate to another the authority to do for him anything that he can do for himself.

329. The Agent may be any person the principal may employ—a minor or any person with intelligence enough to follow instructions. A minor, although not competent to contract for himself, can, as an agent, make any contract his principal could make.

330. Agent's Appointment. An agent may be appointed simply by word of mouth or by Power of Attorney, or it may only be gathered from facts.

A principal who ratifies an act which his agent was not authorized to do becomes responsible for that act, and also for all similar acts though they are not ratified by him.

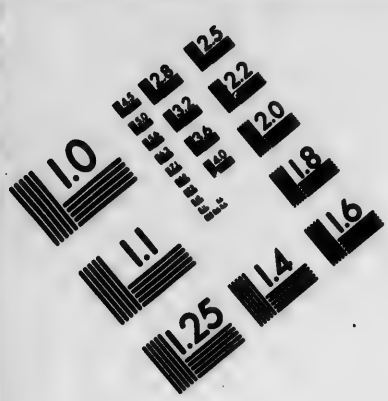
To evade liability, or to refuse to make the transaction his own is merely to refuse to accept the benefits accruing from the transaction.

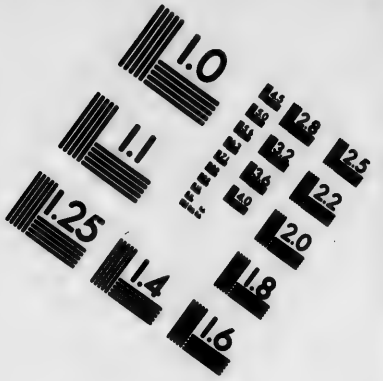
He may ratify it either by express words, or by resolution of the directors if a stock company, or it may be by simply accepting the benefits accruing from the unauthorized business so transacted.

331. Appointment by Power of Attorney. When the business to be performed by the agent is of such a nature that it requires him to sign notes, accept drafts, issue cheques, sign deeds, mortgages, etc., or to enter into other contracts under seal, a formal document under seal, called a Power of Attorney, is usually given. This Power of Attorney may be general—giving the agent power to transact all the usual business of the principal; or it may be specific—giving authority only to one or more particular acts, and no more. A Power of Attorney may also be proved by being executed in the presence of a notary public who places thereon his attestation of its execution.

332. Form of Power of Attorney.

KNOW ALL MEN BY THESE PRESENTS, that I, James Everingham, of the town of Strathroy, in the County of Middlesex, and Province of Ontario, merchant, do nominate, constitute and appoint James Marion, of the City of Chatham, County of Kent, my true and lawful attorney, for





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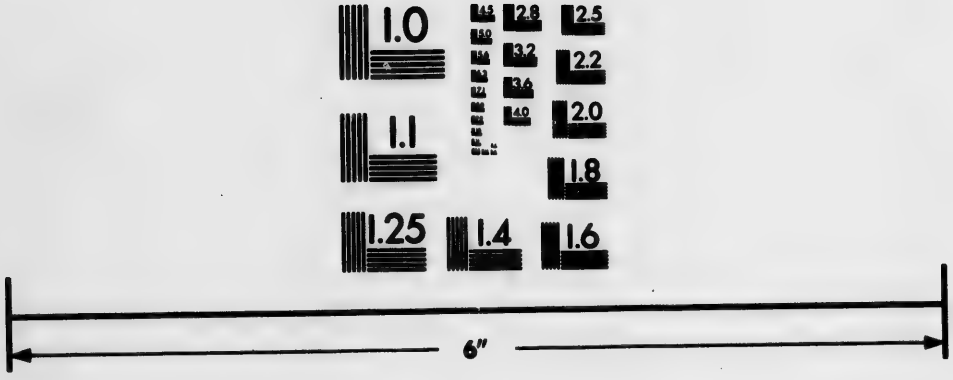

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WEBSTER, N.Y. 14580
(716) 872-4503

me, in my name and on my behalf to (give in full the work to be done by Marion for Everingham).

AND for all and every of the said purposes hereinbefore mentioned, I do hereby give and grant unto the said James Marion, full and absolute power and authority to do and execute all acts, matters and things necessary to be done for the full and proper carrying out of all said matters entrusted to him and do hereby ratify and confirm, and agree to ratify and confirm and allow all and whatsoever the said James Marion shall lawfully do by virtue thereof.

In witness whereof I have set my hand and seal this 31st day of August, 1896.

Signed, Sealed and delivered in the presence of A. L. JONES. } JAMES EVERINGHAM. ✱

333. Limit of Authority. A signature by procuration (as agent) operates as a notice to the public that the person so signing has but a limited authority, and the principal is bound by such signature only so far as the agent is acting within the actual limits of his authority. As a usual thing the instructions given by the principal to an agent are to do a specific business, also how it is to be done; but in carrying out the details the agent is allowed considerable latitude. He must follow his instructions. If he exceeds his authority he renders himself liable. If he is to sell goods for cash he must not sell on credit or accept notes; if to collect money on accounts this would not authorize him to issue notes or accept drafts in his principal's name.

334. General Agents are those who have authority to act in all capacities in the place of their principal, or all in a certain locality, or all of a certain kind. A commission merchant would be a general agent, so also are Secretaries, Treasurers and Managers of Stock Companies. The acts of general agents bind their principals with respect to third parties even for fraud or negligence on the part of the agent.

335. Special Agents are those who are limited to a certain class of action, and their principal is not responsible for what they do outside of this. On this account parties dealing with any special agent should be careful that their contract comes within the agent's authority if it is important to them that the principal should be held responsible.

336. Agent's Obligations to Principal.—

1. To use the same care and forethought in the management of the business that he would if it were his own.

2. To follow implicitly the principal's orders except in cases where the circumstances would make it manifestly wrong to do so. For instance: Something has occurred after giving the instructions which the principal had not foreseen and which would cause the orders to work to the disadvantage or injury of the principal if they were carried out, or where the orders were to perform something unlawful.

3. To keep an accurate record of all business transacted.

4. To keep the goods and property of his principal separate from his

own, and from that of other parties. In case they should become indistinguishably mixed the principal could claim the whole.

5. In case the business is transacted in the name of the principal, as is usually done, the money that may be deposited in a bank should also be in the name of the principal.

337. Agent's Liability. He is liable to his principal for any damage that may occur through his negligence, and for any loss that may arise through his failure to carry out his instructions. If he departs from his instructions and thereby secures any gain the principal has the benefit of it, but if his deviation produces a loss the agent is liable for it.

He is liable to third parties if he goes beyond his authority. In that case he does not bind his principal, but he renders himself personally liable. A person assuming to act when he has no authority renders himself liable for damages.

He is also liable to third parties for any wilful injury committed against them. The fact of his being an agent does not relieve him from his obligations as a citizen, hence even while in the discharge of his principal's business if he wantonly commits any injury he alone is liable. He is also liable for any criminal action of which he may be guilty.

He also makes himself personally liable to third parties if he should improperly sign a note or accept a draft by signing his own name as *agent*. If, say, W. Winters, as an agent, were to accept a draft by writing *W. Winters, Agent*, he would be personally liable for its payment. The same is true of Secretaries, Treasurers and Managers of Stock Companies. They should in every case, when signing for their company or their principal, sign the name of the company or principal in conjunction with their own. The following are suitable forms:

JAMES SMITH,
Per W. Winters, Agent.

W. WINTERS,
For James Smith.

JAMES SMITH,
Pro Con W. Winters.

DOMINION TRANSPORTATION CO. (LTD.),
Per W. Winters, Manager.

W. WINTERS, MANAGER,
Signed for and on behalf of Dominion Transportation Co. (Ltd.).

An agent may describe himself either by the term "per," "pro," "pro con," or the word "for." He must always disclose the fact that he is only an agent, or he may be held personally liable; and he must sign his principal's name as well as his own either before or after it.

338. Principal's Liability. General agents bind their principals, rendering them liable to third parties even for the fraud or neglect of the agent. The employees of Railroad and Steamboat Companies, etc., are all

general agents. When passengers are injured through an accident they do not enter an action against the captain or engineer, whose negligence may have caused the accident, but they sue the company—the principal.

Special agents do not bind their principal only in so far as they keep within the limits of their authority. If they pass beyond this, or are guilty of a fraudulent act, they only render themselves liable.

Third parties should ascertain the authority possessed by special agents if they would protect themselves when contracting with such. An agent should always have the evidence of his authority with him, and if he has it not no important transaction should he performed with him.

Money paid to an agent who has no authority to receive it cannot be recovered from the principal.

Money should never be paid to an agent for a note unless he has the note to deliver over.

A contract made with a special agent who is exceeding his authority cannot be enforced against his principal.

An agent's authority dies with his principal; if, however, he acts after the death of the principal innocently, both are relieved.

Notice given by the agent to third parties is notice given by the principal, and notice given by third parties to the agent is notice given to the principal.

339. Sub-Agent is one who acts under another agent, either general or special. The same principles and laws rule between the agent and his sub-agent as exist between himself and the principal. The agent is the principal to the sub-agent.

340. Termination of Agency.—

1. By lapse of time. At the expiration of the time for which the agent was appointed the agency ceases unless there has been a re-appointment. The re-appointment need not necessarily be formal, but by any of the means already mentioned for the creation of an agency.

2. Completion of the undertaking terminates the authority of the agent.

3. A legal revocation of the principal terminates the agency. Where the agency would not be for any definite time, or the completion of a specific work, the principal could withdraw the powers he had granted; but if it were a definite time not yet expired or a specific work not yet completed there must be sufficient cause before a revocation could take place. An agent exceeding his authority, guilty of fraud, or becoming incapacitated for his duties would be sufficient cause for his dismissal.

4. Death or incapacity of either principal or agent terminates the agency. Insanity or death of either principal or agent, or the insolvency of the principal dissolves the agency.

If an agent's appointment was by a document under seal it would require a sealed instrument to cancel it.

341. Effect of Notices, Tenders, etc. Notice given to the agent is deemed to be given to the principal at the same time it was given to

the agent, and payments tendered to the agent is payment tendered to the principal. Notice or payment tendered by the agent to the third parties is tendered by the principal.

342. Ratification and Disaffirmance. If an agent should do business for the principal which he is not authorized to do and the principal accepts it, he thereby ratifies it, and thus becomes responsible, not only for that particular transaction but for all similar acts. Ratification of an act has the same effect as prior authority. Ratifications may be effected in two ways: (1) By express words. In case of corporations and stock companies it is usually done by resolution. (2) By accepting the benefits accruing from the act.

By refusing to make the transaction his own, either by express words or by refusing to accept the benefits accruing from it is disaffirming the act.

CHAPTER XIV.

MASTER AND SERVANT.

343. The Relation subsisting between Master and Servant is in many respects the same as that subsisting between principal and agent, so that what has been given in the previous chapter will in nearly every particular apply here.

The master is the employer and the servant the employee. In order to constitute a contract of hiring and service there must be either an expressed or implied mutual engagement binding one party to hire and remunerate and the other to serve for some determinate time. In cases where the employer only agrees to pay as long as the servant remains, leaving it optional either with the servant to serve or the master to employ, there is no contract of service and hire.

344. Contract of Service and Hire. Oral as well as written agreements between master and servant, and between master and journeyman or skilled laborer in any trade or calling are binding unless the term exceeds one year.

If for a longer period than one year it should be in writing, and if for a shorter period than one year, but which does not commence in time to be completed within the year, it is required to be in writing.

No voluntary contract of service shall be binding on either party for a longer time than nine years from date of contract.

If no *express* contract has been made for hire between the parties a contract will be *presumed* if the service is performed, unless it is with near relatives, as with parent or uncle.

If service has been performed without anything being said about wages *the law presumes* that the parties agreed for the customary wages for that kind of service paid in that community. But the law will not presume either a contract of hire or an agreement to pay wages where

service is rendered with near relatives, as a parent or uncle. In such cases an express hiring must be *proved* in order to support a claim for wages. Where it is not specially agreed to the contrary, wages would be payable at the end of the time.

A person agreeing to serve as a laborer or clerk cannot be compelled to fulfil his agreement, but damages may be recovered for breach of the contract.

A person agreeing to hire another for a day, week, or month cannot be compelled to furnish work, but if the one hired presents himself for service each day he can collect his wages.

345. Form of Agreement for Hire.

THIS AGREEMENT, made the 3rd day of April, 1896, between John Smith of Grantham, yeoman, of the first part, and James Robinson, of St. Catharines, laborer, of the second part.

Witnesseth that the party of the second part agrees with the party of the first part to serve him as a farm laborer and general servant for the period of one year from this date, and in all things to faithfully observe and do all the reasonable wishes and commands of the party of the first part.

And the party of the first part agrees to pay the party of the second part one hundred and fifty dollars and to board and lodge the party of the second part during said period, and to cause all necessary laundry wash to be done for him. Said money to be paid as follows: Fifty dollars in six months, and the balance at the expiry of said service.

Witness our hands the day and year above written.

WITNESS: CHARLES SUMMERS. } JAMES ROBINSON, JOHN SMITH.

346. Contract of the Employee. The employee must fulfil the agreement, whatever that may be, and to do this faithfully requires not only diligence, but his careful attention, skill and forethought. The implements, machinery or other property with which he may be working, or which fall under his care, require not only proper use by himself, but also his care that they be not stolen. The live stock that may be entrusted to him, humanity as well as his agreement requires that he sees to it that they have food and water and proper care in general. His master pays for his skill as well as he does for his time, also his diligent forethought in planning or executing his work. He is expected to obey all reasonable orders from the master, to be punctual and courteous.

A flagrant violation of the implied agreement in any of these particulars renders him liable for damages or for discharge as the case may be.

347. Notice to Leave. A servant hired for a definite period, either for a day, a week, a month, or a year, may, on the termination of the time, leave, or the master may discharge him without giving any notice.

Where the hiring is for no definite time and the wages paid so much

per day, week, month, or year, when either party wishes to terminate the contract the other party is entitled to notice:

If paid by the day.....A day's notice.
If paid by the week.....A week's notice.
If paid by the month.....A month's notice.
If paid by the year .....Three months' notice.

The notice need not be in writing, but where the time is longer than a day it would be much better to give a written notice.

348. Causes for Discharge Without Notice. The employee is presumed to give due diligence to the discharge of the duties assigned to him, to be punctual as to time, to obey all reasonable commands, and to be responsible for all damage caused by his negligence. If, therefor, he violates the agreement by habitually neglecting his duties, by taking absences without permission, or in any of the following ways, he may be discharged without notice by paying him the wages due:

1. Wilful disobedience of any lawful order of the master.
2. Gross moral misconduct.
3. Habitual negligence in business, or conduct calculated seriously to injure the master's business.
4. Incompetence in the higher service where special knowledge or skill is required, or permanent disability through illness. Temporary illness would not be sufficient cause for discharge.

The wages to be paid in case of a discharge *for cause* are not necessarily in proportion to the time the servant has labored. The wages that are due must be paid, but the wages that may have been earned may not yet be due, and these need not necessarily be paid.

349. Discharge with Notice. Persons employed on a weekly or monthly service may quit or be discharged by giving a week's or a month's notice; or at a moment's notice by payment of a week's or a month's wages.

350. Cause for Leaving. The master's commands are presumed at time of contract to be reasonable, legal, and to be within the limit of work the servant was employed to perform. The implements and machinery are supposed to be suitable for that kind of work and so protected as to be reasonably free from danger. If, therefore, the master gives unreasonable commands and endeavors to enforce them the servant has cause for leaving.

If the machinery or any particular machine used by the employee is not considered suitably protected and he gives notice to the employer, who still requires work to be done with the dangerous machine, it is a cause for leaving.

If any accident occurs after giving of such notice the employer is liable for damages.

If the servant used the machine without giving any notice of its danger he cannot claim damages for an accident.

If the master does not pay the wages as per agreement the servant

may procure a discharge and wages due by placing the matter in the hands of a Justice of the Peace.

351. Master Liable on Servant's Contracts. If a master holds out his servant as an authorized and accredited representative he is responsible for his action. This liability may arise in three ways:

1. By adoption by the master of the servant's contracts. If the servant as agent contracts for his master and the master adopts and ratifies the contract, he will be liable on it.

2. By giving express authority to contract either by deed, writing or word of mouth.

3. By creating an implied authority to contract. The servant's usual employment is regarded as the measure of his authority. Where the master holds his servant out as his general agent by making contracts, purchasing goods on his credit, etc., the master is liable so long as the servant acts within the scope of that authority, and he will be liable within that scope even should the servant act contrary to his orders.

352. Master Liable for Servant's Acts. The master's liability is not boundless, but justice and common sense fix certain well-defined limits. In general terms the master is liable for all those acts which are brought about through his instrumentality.

1. He is liable for the acts of his servant performed within the scope of his employment, however wrongful they may be, but he is not responsible for the wrongful act if it is not done in the execution of his authority and in the course of his employment.

2. Where a servant is driving a horse, which runs away and does damage, if on the master's business.

3. Where in executing his orders with reasonable care and does damage.

4. Where he does an injudicious act and does damage.

5. When the servant even wantonly does injury if acting within the scope of his employment.

6. For injury done by the servant through drunkenness, if acting within the scope of his employment.

7. If he orders the servant to commit a trespass, or if the trespass results from the action to be done.

He would not be liable for a wrong done by the servant that was contrary to his orders, or if the master were absent.

8. The master may be criminally liable for a criminal act of his servant which he expressly authorized, or co-operated in its commission, but not otherwise.

The master is liable for the act of his domestic or menial servant whether it be one of omission or commission, neglect, fraud, deceit, or even of misconduct, if it be done within the scope of his employment or with the express direction or assent of his master, no matter how much he may abuse his authority.

353. The Master is not Liable in any case for the injurious acts of his servant unless they are wilful or the result of negligence.

Where there is no express or implied authority to do the act, or

the act of the servant is an act of his own, the master is free from liability.

If the master does not give any express or implied authority for the servant to pledge his credit, he is not liable for any contracts made by the servant in his name.

The master is not liable for the contracts of his servant where they have an express authority and exceed it; or where they have an implied authority and act beyond the scope of their employment. The servant acting outside his authority does not bind his master.

The master is not liable after he has given notice that he has terminated his servant's authority to pledge his credit. The notice must be brought home to third parties, to whom he has by his acts given an implied authority.

354. Servant's Liability. A servant may render himself liable:

1. On contracts made on behalf of his master if he does not disclose the fact of his agency. When contracting in his own name he should always use words describing his capacity, as "agent for." or "per," "pro," etc.

2. For damages committed on behalf of his master he is liable as well as his master, and to all third parties he stands as a principal.

3. He is also liable for a joint fraud committed with his master; for no contract of service compels a legal obligation to commit a fraud or do a wrong.

4. In crimes as well as in injuries he is liable, and cannot evade responsibility by saying that he was only a servant and acting under his master's orders.

5. For any criminal action of the servant not expressly authorized by the master the servant only is liable.

355. Termination of Service. A contract of service is terminated by lapse of time.

By the death of the hirer. The servant must be paid wages up to that time.

By the death of the servant. His legal representatives will collect his wages for the time during which service was rendered.

A domestic or other yearly servant wrongfully quitting his master's service forfeits all claim to wages for that part of the current year during which he has served.

If a domestic be wrongfully dismissed his remedy is an action for damages against his master for the breach.

Temporary illness is not a sufficient cause for a discharge, unless the contract has been rescinded.

A domestic servant wrongfully quitting his master's service forfeits that part of his wages due since the last day of payment.

356. Legal Proceedings. If any disagreement exists between master and servant, proceedings must be taken before a Justice of the Peace within one month after the engagement has ceased.

If the Justice receives the evidence of the plaintiff he must also receive that of the defendant.

When wages are not paid by the master to the servant, the servant may, within one month after the engagement ceased, or within one month after the last instalment of wages was due, go before a Justice for a hearing of the case, and if furnishing sufficient proof of the cause of his complaint, secure a discharge and obtain an order for payment of wages to the amount of $40.00 and costs.

Either party may appeal from the Magistrate's decision to the Division Court by giving notice of appeal to the other party within four days after the decision, and at least eight days before the holding of the Division Court; also, within the four days to enter into a bond with the opposite party with two sureties, approved by the Clerk of the Court, for $100.00 ; as a guarantee to appear and to cover the costs.

Where masters and workmen establish a Board for the settlement of their difficulties that may arise, it has by statute all the powers that arbitrators possess, and its decisions are binding. (See Revised Statutes of Ontario, Chap. 140.)

CHAPTER XV.

PARTNERSHIP.

357. Partnership is a contract between two or more persons who join together for the purpose of conducting a certain business, with an understanding to participate in certain proportions in the profits or losses accruing.

They may join their money, goods, labor and skill. or any or all of them. What mutually constitutes a partnership is a "community of profits." Firm, Company, House and Co-partnership are all synonymous terms used to represent a partnership business.

358. There are Three Classes of general partners:

1. Dormant, silent or sleeping partner; that is one who has an interest in the business but whose name does not appear. It is represented in the firm name by "& Co."

2. Ostensible partner is one who lends his name to the firm for the sake of its reputation, but who has no financial interest in the business.

3. Actual partner is one who has both an interest and whose name appears in the firm name.

As regards their respective liability to the public, they are all equally liable.

359. Partner's Liability. In a general partnership each member is not only liable to the public for his particular interest in the business, but also for the whole debts of the firm.

360. Special Partner is one who takes a certain interest only in the business, and who also only undertakes to share a certain amount of the gains or losses. The amount of losses which he assumes liability for must not be less than the amount of capital he invests. This special partnership arrangement must be inserted in the partnership agreement and filed at the office of the County Court Clerk.

This special or limited partner must not have anything whatever to do with the management of the business, and takes no part in the work. He may give counsel to the firm, but if he takes any part in its management he makes himself a general partner, and thus liable for all the debts of the firm.

361. Partnership Agreement. A large number of partnerships are unwisely formed, simply by an oral agreement, and thus a wide opportunity left for future disagreements and much friction. Sometimes two parties will engage in business together without any definite stipulations other than the division of the profits, thus having only an *implied* agreement.

Properly, every partnership agreement should be reduced to writing, with a great deal of deliberation and caution.

It may also be sealed, which gives it a still greater sanctity.

362. The Articles of Co-Partnership should contain:

1. The names in full of each member.
2. The nature of the business to be conducted.
3. The place where it is to be conducted.
4. The amount of capital that each partner invests.
5. If any partner makes no cash investment, but whose experience or skill, etc., is his investment, that should also be inserted.
6. The date of commencement and duration of the contract, if it is for a definite period.
7. If a division of work is agreed between the partners, such as for one partner only to sign all orders for goods, accept all drafts, issue the notes, etc., it should be clearly revealed in the agreement.
8. Provision for settlement in case of the death of a partner.

Besides these, there are various other things which could profitably be embodied in the agreement, such as that neither should be a candidate for a municipal office or an active political partisan without the consent of the firm; also, that neither partner should indorse paper for others, or become bail for any person, without consent of the firm, or to engage in any other business that would require investment and possibly incur loss. Also a provision for winding up the business in case of a dissolution.

363. Registration of Partnership. Every partnership must be registered at the County Registry Office where the business is carried on.

The registration must be made within six months after the partnership is formed.

The penalty for not registering is a fine of $100—one-half to go to the informer and the other half to the Crown.

364. Form for Registration.

PROVINCE OF ONTARIO, } We, James Smith and James Robinson, of
County of Wellington. } the City of Guelph, County of Wellington, Province of Ontario, hereby certify:

1. That we have carried on and intend to carry on the trade and business of Carriage Building and General Blacksmithing at Guelph in partnership, under the name of the firm of Smith & Robinson.

2. That the said partnership has subsisted since the 15th day of June, 1896.

3. That we are and have been since the said day the only members of the said partnership.

Witness our hands at Guelph, this 2nd day of June, 1896. } JAMES SMITH. JAMES ROBINSON.

365. Formation of Partnership. Partnerships are formed by agreement of the parties, either expressed or implied. The expressed may be either Oral, Written, or Under Seal. The test of partnership is "a community of profits." In any case where parties are associated in business, if it is necessary to prove the existence of a partnership, all that is necessary to do is to prove that there is a common fund for the parties concerned, and that there is also a community of profits. With this feature in mind, it can be unerringly known in all cases whether there is a partnership in a legal sense or not. Parties may be associated in business arrangements without this "community of profits" to be shared. Parties may also, without any specific agreement, be proved to be partners by implication. For instance: Jones buys apples and ships them to Brown to sell, they divide the profit accruing from the transaction, there is a partnership by implication, subject to all the laws and liabilities of partnership.

366. Partnership Capital. The capital a partner contributes to the partnership may be in cash, real estate, personal property, or secret process of manufacture, a patent right, copyright, labor, skill, or time in management, good-will of an established business, etc., and in each case be subject to the same liabilities, and possess equal privileges.

367. Form of Articles of Partnership.

ARTICLES OF AGREEMENT made the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-six.

BETWEEN James Carlisle, John Adams and Charles Andrews, all of the Town of Acton, in the County of Halton, Province of Ontario.

WHEREAS the said parties hereto respectively are desirous of entering into a Co-partnership, in the business of the Manufacture and Sale of Furniture, at Acton aforesaid, for the term, and subject to the stipulations hereinafter expressed.

NOW, THEREFORE, THESE PRESENTS WITNESS, that each of them the said parties hereto, respectively, for himself, his heirs, executors and administrators, hereby covenants, with the other of them, his executors and administrators, in manner following, that is to say:

1. That the said parties hereto respectively shall henceforth be, and continue partners together in the said business of the Manufacture and Sale of Furniture, for the full term of Five Years, to be computed from the tenth day of September, one thousand eight hundred and ninety-six, if the said partners shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

2. That the said business shall be carried on under the firm name of The Acton Furniture Co.

3. That the said partners shall invest capital as follows:—James Carlisle, Eight Hundred Dollars, cash; John Adams, Five Hundred Dollars, cash; and Charles Andrews, Five Hundred Dollars and Tools valued at Two Hundred Dollars.

4. That the said partners shall be entitled to a salary in lieu of services, as follows: James Carlisle, as foreman of factory, Ten Dollars per week; John Adams, as bookkeeper, Twelve Dollars per week; and Charles Andrews, as salesman in the store, Nine Dollars per week.

5. That the said partners shall be entitled to the profits of the said business in the proportions following, that is to say: According to investment the first year and according to the net credit of each at the beginning of each subsequent year:

AND that all losses in the said business shall be borne by them in the same proportion (unless the same shall be occasioned by the wilful neglect or default of either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise).

6. That the said partners shall each be at liberty, from time to time during the said Partnership, to draw out of the said business, for private use, any sum or sums not exceeding for each, the sum of three Hundred Dollars per annum, such sums to be duly charged to each of them, respectively, and no greater amount to be drawn by either of the said partners except by mutual consent; and interest at five per cent. per annum shall be charged to each partner for such withdrawal from the date of withdrawal until it is repaid, or until next annual settlement.

7. That all rent, taxes, salaries, wages and other outgoing expenses incurred in respect of the said business, shall be paid and borne out of the profits of the said business.

8. That the said partners shall keep, or cause to be kept, proper and correct books of account of all the partnership moneys received and paid, and all business transacted on partnership account, and of all other matters of which accounts ought to be kept, according to the usual and regular course of the said business, which said books shall be open to the inspection of all the partners, or their legal representatives. A general balance or statement of the said accounts, stock in trade and business, and of accounts between the said partners, shall be made and taken on the first day of March in each year of the said term, and oftener if required.

9. That the said partners shall be true and just to each other in all matters of the said co-partnership, and shall at all times, during the continuance thereof, diligently and faithfully employ themselves respectively in the conduct and concerns of the said business, and devote their whole time exclusively thereto, and neither of them shall transact or be engaged in any other business or trade whatsoever: And the said partners, or either

of them, during the continuance of the said co-partnership, shall not, either in the name of the said partnership or individually in their own names, draw or accept any bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or wilfully do, commit or permit any act, matter or thing by which, or by means of which, the said partnership money or effects shall be seized, attached or taken in execution; and in case either partner shall fail or make default in the performances of any of the agreements of articles of said partnership, in so far as the same is or are to be observed by him, then the other partner shall represent in writing to such partner offending, in what he may be so in default; and in case the same shall not be rectified by a time to be specified for that purpose by the partner so representing, the said partnership shall thereupon at once, or at any other time to be so specified as aforesaid by the partners offended against, be dissolved and determined accordingly.

10. That in case either of the said partners shall die before the expiration of the term of the said co-partnership, then the surviving partners shall, within the six calendar months after such decease, settle and adjust with the representative or representatives of such deceased partner, all accounts, matters and things relating to the said co-partnership, and that the said survivors shall continue to carry on thenceforth, for their sole benefit, the co-partnership business.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered
In the presence of
W. SWEETMAN.

JAMES CARLISLE. ✱
JOHN ADAMS. ✱
CHARLES ANDREWS. ✱

368. The Firm Name. There are no restrictions placed upon the choice of a Firm name for a partnership as in case of a stock company.

Any individual who wishes to add "& Co." to his name, or to use any special name other than his own may do so by registering a declaration to that effect, the same as though a number of persons were united.

In signing any documents the firm name should always be used without the least variation. In many cases the partners would not be liable if the name of the firm is varied, nor if the person signing is not acting within the scope of his authority.

369. Non-Trading Firms. Firms that are not trading firms, such as a law firm, do not come under the partnership laws, neither can they give a note as a firm. They may all sign it, but it is only as a joint and several note, the same as thongh they were not associated personally.

370. Church Trustees may be held personally liable if they sign their names to any document for church purposes, as there is no Act of Parliament giving them power to act as such, or authority to bind others whom they may chance to represent; but this does not apply to mortgages on property of the church congregation.

The same is true of the officers of the various social and benevolent associations.

371. Powers and Limitations of Partners. Each general partner, unless prohibited in the articles of co-partnership, becomes a general agent of the firm and has power to act for the firm.

He may bind the firm in all matters that come within the limits of the business undertaken by the firm. For instance: If a firm were engaged in the grocery business a partner could bind the firm in such transactions as would properly belong to the grocery trade; but he could not for anything pertaining to a coal business, or in real estate, etc.

Each partner can act for the firm unless he is prohibited in the partnership agreement. He may receive payment of bills and accounts, compromise with a debtor, or represent the firm in a suit at court, or borrow money necessary to carry on the firms business.

He may make a note or accept a draft for the firm in the regular course of business, or do any other act he deems necessary in the interest of the firm.

If a bill or note is signed by one of the firm, the firm can be held liable, providing that two things can be proved, viz.: That it was for the firm purposes, and that the person signing it had proper authority to do so.

A promissory note or acceptance bearing the firm name signed by a partner, although not given for firm purposes, will be collected if it passes before maturity into the hands of an innocent holder for value.

A partner not invested with the right, and binding his co-partners, renders himself liable to them.

One partner cannot bind the firm by an instrument under seal unless he has been empowered by an instrument under seal to do so.

372. Acts a Partner Must Not Do. One member of a firm has no right to sign the firm name for purposes of suretyship or on private account. He must not employ the property of the firm for his own private use. He must not use the credit of the firm for his own personal benefit. He must not give a firm note in payment of a private debt. He must not issue a firm cheque in payment of a private account, unless he makes the cheque payable to his own order, and then indorses it before delivery.

In general, he must not do anything contrary to the partnership agreement or anything prejudical to the interests of the firm.

373. Liabilities in Case of Insolvency. A partnership firm becoming insolvent, the entire partnership property would be taken first to satisfy the firm debts. If this did not satisfy the claims, then the private property of all or any of the general partners would, subject to priority of the partner's private creditors, be taken to satisfy the debts.

The special or limited partner in such case would only be liable to the amount of interest he has in the business. If he had previously withdrawn part of his capital, and had not effected a new registration, he would still be liable for the amount withdrawn.

374. Partner Cannot Sue the Firm, as that would be in reality suing himself, for the firm does not exist without him. If, however, he has a private debt or claim against the firm which the firm will not pay, he may assign it to a third party.

375. Partner Selling His Interest. A partner cannot sell his interest without the consent of his associates. If he should sell without such consent it voids the partnership agreement and a dissolution must take place. The remaining partners may accept the new member, but it makes a new partnership even though no other change may be made in the articles of agreement or registration.

376. Bankruptcy, Incapacity or Death of a Partner. A partner in a firm becomes insolvent in his private business, his interest in the partnership passes to his creditors, who are not partners—hence dissolution follows.

A partner dies, his heirs, etc., are not partners—hence dissolution follows.

A partner becomes insane, or an invalid, hence cannot fulfil the partnership agreement, and a dissolution follows.

377. Retiring Partner. A retiring partner from a partnership firm, in order to protect himself from the future liabilities of the firm, must, in addition to the advertisements already mentioned, register a declaration of the dissolution at the County Registry Office.

This, of course, does not free him from previous liabilities thus incurred while he was a member. Nothing but a release from the individual creditors can free him from the past liabilities.

But for all business interprises intended to be permanent and of large dimensions, it would be far better to form a stock company instead of a partnership. (See next chapter.)

378. Dissolution of Partnership. The following are among the things that call for a dissolution of partnership:

1. Insolvency of one of the partners.
2. Insanity of one of the partners.
3. Death of one of the partners.
4. Mutual consent.
5. Marriage of a female partner.

The above events do not necessitate a dissolution, but they are a sufficient cause, and if any of the firm should demand a dissolution it must be complied with.

They are also dissolved by expiration of time, by the completion of the work for which they were formed, or by a decree of the Court.

In the case of a dissolution notice must be given to the public in the following manner:

For persons whose business has been conducted in Ontario, notice must be given in the *Ontario Gazette.*

For persons whose business extends to the other provinces, notice must be given in the *Canada Gazette.*

It is also customary to give notice in the local press and to send circulars to each individual firm with whom business has been done.

379. Dissolution by Decree of Court. Sometimes partners fail to agree and by continual quarrelling or pulling in opposite directions the business of the partnership suffers. If they cannot agree on a dissolution

they may apply to a competent court and obtain an order for dissolution. The following would be grounds upon which such an order may be obtained:

1. Fraudulent conduct by a partner.
2. Violation of the articles of partnership.
3. Unreasonable exclusion of partner from sharing in the management of the business.
4. Quarrelling to an extent to render it impossible to properly and successfully carry on the business of the firm.
5. Inability of the partner to act, on account of permanent illness, or being otherwise disabled.
6. Intemperance or immorality of a partner that would have the effect of injuring the business or impairing the credit of the firm.

380. Registration of Dissolution.

A notice of dissolution of a partnership is also required to be recorded in the County Registry Office. The following form will answer:

PROVINCE OF ONTARIO: } I, James Robinson, formerly a member of the
County of Lincoln. } firm carrying on the business of Carriage Building and General Blacksmithing at Guelph, County of Wellington, under the name and firm of Smith & Robinson, do hereby certify that the said partnership was, on the 2nd day of September, dissolved.

Witness my hand at Guelph, this the third day of September, 1896.

JAMES ROBINSON.

381. Business after Dissolution. After dissolution no partner has a right to sign the firm's name without a power of attorney. If a note has to be given the only alternative is for each partner to sign his name separately.

A partner, after dissolution, has power to demand that the assets be used exclusively to pay off the firm's liabilities before anything can be appropriated by the partners.

CHAPTER XVI.

JOINT STOCK COMPANIES.

382. A joint stock company is an association of individuals possessing corporate powers, enabling them to transact business as a single individual.

The incorporation of a joint stock company may be effected either under Dominion or Provincial Legislation.

Under the Dominion Legislation it may be either by Special Act of Parliament or by Letters Patent under the Joint Stock Companies' Act. Banking, railway, telegraph and insurance companies must be incorporated by Special Act, as the powers they seek are so extensive that special legislation is necessary to determine their limit.

Under the Ontario Legislature incorporation is secured under the Joint Stock Companies' Letters Patent Act, found on page 1,443 of the Revised Statutes of Ontario for 1887, or by Special Act.

383. Advantages of Incorporation are many, the following of which are chief:

1. The business can be conducted on a much more extensive scale, as many more people can be interested in it than would be possible in an ordinary partnership.

2. The liability of shareholders is limited to the amount of stock they hold, an advantage of great consideration when compared with the dangers of partnership.

3. Property in the business is more easily transferred than in partnership. Paid up stock may be sold at any time. On the death of any of the stockholders, their shares pass to their heirs and the business is unchanged.

4. Employees can be interested in the business, and thus rendered permanent and their services more valuable.

384. Corporate Bodies include many that are not trading firms, such as townships, counties, incorporated villages and towns, cities and provinces. Also ecclesiastical, educational and charitable institutions may be incorporated. All such can buy and sell property, enforce their by-laws, sue and be sued for debt.

385. How to Form a Company. The first thing to be done is to open a Stock Book in which the subscribers enter their names for the number of shares they wish to take. When one-half the stock has been taken and ten per cent. thereof paid in, then the application may be made for Letters Patent.

If under Provincial Legislation, application should be made "To the Honorable Provincial Secretary," Toronto. If it is under Dominion Legislation, application should be made "To the Honorable Secretary of State," Ottawa.

If the business of the company would be confined to Ontario the charter would be obtained from the Ontario Government, but if it would extend to the other provinces as, for instance, a steamship line between Toronto and Montreal, then the charter would be taken from the Dominion Government.

386. The Petition. About the first step taken either by the solicitor or any person doing the official correspondence is to communicate with the Provincial Secretary or the Secretary of State, as the case may be, concerning the formation of the company, who will forward a copy of the Act, together with the necessary instructions, and also a blank petition for the signatures of the applicants.

Then this petition is filled out according to the instructions and forwarded to the Provincial Secretary or Secretary of State, as the case may be, accompanied by the Government fee, affidavits, etc.

Upon receipt of this, notice will be immediately given in the official *Gazette* of the letters patent, when the parties named therein and their

successors become a body corporate and politic by the name mentioned in the same.

387. Advertising in the Official Gazette. Before the application can be made for incorporation the applicants must publish in the *Ontario Gazette* or the *Canada Gazette*, as the case may be, for four consecutive numbers, their intention to apply for the same, giving the proposed name of the company, its purposes, amount of capital, number of shares, place of business, name, address and calling of the applicants, and the names of the Provisional Directors.

Permission may be obtained to dispense with the advertisement if the capital of the company does not exceed $3,000.

388. The Name of the company must not be the same, or even similar, to that of any other company, whether incorporated or not. Under Ontario legislation the name of the province or some locality therein must constitute part of the name of the company being incorporated, except in cases where the Lieutenant-Governer-in-Council otherwise permits or directs.

389. The Government Fee may vary at different times and according to the nature of the company, the amount of capital, etc. The present fees for Ontario are: When the capital is less than $40,000, $30; $40,000 and under $100,000, $50; $100,000 and under $200,000, $100; $200,000 and under $500,000, $150; $500,000 and upwards, $200. The lowest fee is $10, for a company the capital of which is not over $3,000.

390. Board of Directors. The directors, consisting of not less than three nor more than fifteen, are appointed by vote of the stockholders each year, and the directors have the whole management of the business during their term.

391. Books to be Kept. The law requires certain books to be kept, giving the names of the stockholders and the shares owned by each, the amounts paid in on stock, the names and addresses of the directors.

These books are always to be open for inspection by creditors or the public in general.

392. Unpaid Stock. Stock that has been subscribed for but not paid up stands as a resource, and is a security to the public, and if the company became insolvent each stockholder would have to pay up the balance of his unpaid shares.

393. Limited Liability. In stock companies a shareholder is only liable to creditors to the amount of stock he has subscribed for. If that has been paid he is not liable to creditors for anything in case of bankruptcy of the company. This is one great advantage of a stock company over a partnership.

394. Double Liability applies only to chartered banks. A stockholder in a chartered bank is liable to creditors for double the amount of stock he subscribed for.

If it has all been paid up, and the bank fails, he is liable to be called

upon for just that much more. If the stock has not all been paid up, he will have to pay the balance, and then another sum of same amount as the stock he owned.

395. Transfer of Stock. Shares in a stock company are personal property. They may be sold or transferred if they have been paid up. If they are not paid up they can only be sold by the consent of the directors.

396. Dividends can only be paid out of the profits. If there has not been a profit over the running expenses, no dividend can be declared, for if the officers were to declare a dividend out of the capital, they would make themselves personally liable in case the company went into liquidation.

397. Liabilities of Companies. They may be fined or assessed for damages, but of course cannot be imprisoned, because there is no personality.

398. The Word Limited must be affixed to their sign on the front of the building, and wherever the name of the company appears in advertisements, in their contracts, on their letter heads and accounts, etc. If this is not done a penalty of $20 per day is required by law for every day it is neglected.

This word "limited" indicates to the public the nature of the firm they are dealing with, the limited liability of the stockholders; hence the rigor of the law in requiring it to be ever present with the company's name.

399. Liability of Directors for Wages. The directors of the company are liable to laborers, apprentices, etc., for one year's wages due for services performed for the company while they are such directors, provided, the company has been sued therefor within one year after the debt became due, and the execution against the company has been returned unsatisfied in whole or in part; and provided also the director has been sued therefor within one year from the time when he ceased to be such director.

400. Liability of Directors for Illegal Dividends. The directors are prohibited from paying dividends when the company is actually insolvent, or to pay dividends out of the capital.

If any director present when such dividend is declared, does forthwith, or any director then absent within twenty-four hours after he becomes aware thereof and is able to do so, enters on the minutes of the Board of Directors his protest against the same, and within eight days thereafter causes such protest to be published in at least one newspaper as near as possible to the office or chief place of business of the company, he may thereby, but not otherwise, exonerate himself from liability.

401. Annual Statements. The Government each year furnishes the company with blank forms to be filled in by the officers of the company, giving detailed information concerning company affairs, stockholders, transfers, etc.; one copy of which must be forwarded to the

Government and the other to be posted up in the head office of the company before the first day of February.

If this is not done by the above date the company incurs a penalty of $20 for every day during which the default continued. And every director, manager, or secretary of the company who knowingly or willfully permits such default incurs the like penalty.

402. Forfeiture of Charter. If the company does not go into actual operation within three years after its incorporation the charter shall be forfeited. Also, the charter shall be forfeited by non-user during three consecutive years at any one time.

403. Liquidation. A joint stock company may be forced into liquidation by its creditors when a demand for a debt amounting to $200 has remained unpaid for sixty days.

CHAPTER XVII.

LANDLORD AND TENANT.

404. The relation subsisting between landlord and tenant is that which subsists between the owner of houses and lands and the person to whom he grants the use of them for a specified time for a stipulated consideration, called *rent.* In the law books the landlord is called the *lessor* and the tenant the *lessee.* The same class of persons who can contract in regard to notes and bills can contract as regards landlord and tenant; that is, those of the full age of twenty-one years and of sound mind

405. Lease is the name given to the contract between landlord and tenant. It may be either oral or written, or under seal. Oral, verbal and parole all mean the same thing, viz., by word of mouth. In this chapter, *oral* will be the term used.

In Ontario an oral lease for one year and under is valid, and the lessor may bring action and recover the rent though the lessee has not entered.

Oral leases for a term not exceeding three years from the making thereof when completed by entry and payment of rent need not be in writing.

But an oral agreement or a writing not under seal to lease premises for three years from a future time, thus making the tenancy last for more than three from date of making, is void. If written it must be under seal to be valid.

An oral or a written lease not under seal for an original term of less than three years may give the lessee the right on notice to continue the holding beyond the three years from the making of the lease.

But an oral *agreement* for a lease of three years where the tenant has

not entered upon the premises will not support an action to compel the tenant to enter or to pay rent, nor the landlord to give possession.

A lease for a term exceeding three years and up to seven, must be in writing and under seal. Ninety-nine years is longest term of lease.

A lease for over seven years must be in writing, under seal and recorded. If not registered a person buying the property without notice of this lease could, by giving six months legal notice, eject the tenant.

A tenancy "from year to year, so long as both shall please," may be terminated at end of first year by giving six months' notice.

But where it reads "one year certain and so on from year to year," it will be for two years at least and cannot be terminated at end of first year, except by mutual consent.

The lease should state all the conditions and agreements, for oral promises do not avail much in law where there is a written instrument. The tenant might sue the landlord on a separate and distinct verbal agreement, that the house should have certain things done by the landlord in consideration of the tenancy being created by the written lease, but it should be in the lease to make it unquestionable.

If a lease is given prior to a mortgage the mortgagee takes subject to the lessee, and *vice versa* if the mortgage is given prior to the lease.

There must be something of a transfer of possession to create a lease. A person working a farm on shares and having the exclusive possession becomes a tenant; but if he were to work it on shares, perhaps each furnishing part of the seed and dividing the profits, both parties being equally in possession, there is no lease, and the owner, in case the laborer had agreed to pay a certain amount in money, could not distrain for it.

406. Lease by Minors, Idiots, Lunatics, etc. A lease by a minor is not void but voidable. He cannot void it until he comes of age, neither can the lessee.

Leases to minors are not absolutely void, but may be voided when they come of age. If the rent falls due after they attain their majority and they have not repudiated the lease they will be liable for the rent. During their minority they are liable for necessary lodgings, according to their station in life.

Idiots and lunatics may also make leases that are necessary, but cannot be made to take a house that is unnecessary if the landlord was aware of their condition and took advantage of it.

In Manitoba a habitual drunkard cannot make a valid lease. In Ontario and the other provinces if he were so drunk as not to be capable of knowing that he was making a lease, he may void it when he becomes sober, or he may ratify it and make it binding.

407. Tenant's Privileges. The execution of the lease vests the tenant with all the rights incident to possession. He has the exclusive use of the property, and exercises all the rights of the owner for the time being, and may even eject the landlord should he trespass.

If a lease of a farm contained no reservation of a crop of wheat growing at the time of executing the lease, the tenant would be entitled to it.

He has a right to a legal notice to quit from the landlord if his lease is for an uncertain time.

Also to the crops that are on the ground if his tenancy is terminated.

Also to sublet the premises or a portion of them to others unless his contract prohibits it.

The tenant, in case of fire, is free from rent until the premises are again made fit for the purposes of the lessee; and no proceedings can be commenced for the recovery of any such rent until the premises are rebuilt or made fit for the purposes of the lessee.

408. Tenant's Obligations and Liabilities. He is liable for payment of the rent agreed upon; also for any voluntary or permissive injury to the property, and for the performance of provisions and agreements in his contract.

A tenant on a farm must, unless otherwise agreed upon, repair fences, and is liable to adjoining land-owners for any damage occasioned by non-repair.

In the Short Forms of Lease now in general use throughout the country the term, "and to repair," has a very broad meaning; so much so, in fact, that unless modified a tenant may be compelled to rebuild in case of fire. Also the clause, "to leave the premises in good repair," must be modified in the same manner. This is best done in the following, or similar language; "Ordinary wear and tear, and accidents by fire and tempest excepted."

A tenant must, however, even in this case, leave the premises in as good repair as he found them, "ordinary wear and tear," of course, "excepted."

Tenants cannot sub-let the premises if the landlord objects. If he does the landlord may eject; it also renders his lease voidable.

409. Taxes. In all ordinary written or oral leases the landlord must pay the taxes, unless some express provision is made to the contrary.

The fact of a landlord agreeing to pay the taxes does not relieve the goods on the premises, though they belong to the tenant. If the tenant's goods should be seized for such taxes, he must pay them and deduct the amount from subsequent rent. The tenants exemptions cannot be seized for the landlord's taxes.

410. The Landlord's Covenant. The only covenant the landlord makes is to give the tenant quiet enjoyment. If evicted by another person, who has a prior or better claim to the property, the tenant may recover from the landlord any damages that he may sustain.

The tenant must look after the sanitary conditions of the house before he enters, for he cannot avoid paying rent even though the house would be unsafe to occupy, unless he had a special guarantee from the landlord that the sanitary conditions were good.

411. Rent.—When Payable. Rent may be payable in any way agreed upon, either in advance or at the end of the term. It might be a monthly tenancy, and yet the rent payable weekly; or a yearly tenancy, with the rent payable monthly or quarterly. Whatever the agreement may be for payment, the tenant has the whole day on which the rent falls due in which to pay it, and no expense can be incurred until the day after the rent is due.

412. Landlord and other Creditors' Rights. Where there are other creditors, the landlord can only recover, prior to them, for one year's rent. After that he must take his share rateably with the rest.

As far as distress is concerned, where there are no other creditors, he may distrain for six years' rent. After that he has a further remedy by way of action (or suit), and this action may be brought any time within twenty years on a lease under seal.

Rent cannot be sued or distrained for until it is due, even though the tenant may be leaving the premises. If the tenant were leaving the country, with the intent to defraud, the goods could be attached.

If a tenant removes goods fraudulently and clandestinely the landlord may follow for thirty days and distrain; otherwise he must distrain on the premises.

The assignment of a lessee cancels the lease. In case of the assignment of the lessee the landlord has preferential claim for one year last previous to, and three months following the execution of such assignment, and thereafter so long as the assignee shall retain possession of the premises.

413. Distraining For Rent. If a tenant does not pay his rent the landlord may distrain. In this case any person may act as bailiff.

The landlord may distrain for rent the day after it is due, whether it is payable in advance or at the end of the month, quarter, or year, as the case may be.

It must be done after sunrise and before sunset. The person seizing cannot break open outside doors, nor open windows to enter. He may raise the latch or turn the key of the door to open it, but he could not put his arm through a hole to unlock the door or to draw a bolt. He could not raise a window, but if he found a window partially raised he could raise it far enough to admit his body. After he once legally gains admission to the building he may then break open any inside doors, but those of sub-tenants, that are not opened for him.

Distress may be made any time within six months after the expiration of the lease if the landlord still holds possession of the premises. If he has sold the property he cannot distrain; neither can the new owner; but it may be recovered by suit. Distress may be for six years' rent if no other creditors are interested.

A tenant's goods cannot be seized if they are removed from the premises unless the bailiff saw them being taken away, or unless they have been removed fraudulently and clandestinely to prevent seizure for rent. That is, taken away in the night or in any other secret way.

Every person who serves a distress shall give a copy of all costs and charges of the distress to the person on whose goods and chattels the distress is levied.

Furniture, sewing machines, musical instruments, etc., purchased on a lien agreement or not, are liable to seizure for rent if there is not enough other goods to satisfy the claim, but the landlord must pay balance of the lien.

If the landlord distrains, or any other creditor seizes under an execution, the tenant or debtor has the legal right to select and point out

the goods and chattels as to which he claims exemptions. For instance, there are six chairs named among the exemptions; hence the debtor, instead of taking six common chairs, may select the best in the house, and the same all through the list.

When a landlord has issued a distress he loses his right by abandoning it or withdrawing it, and cannot make a second seizure of the same goods for the same debt.

414. Resistance. A tenant may resist the entrance of a bailiff or other person who may come with a landlord's warrant. Any time before the bailiff makes a list of the goods the tenant may retake them from him. After the bailiff makes a list of the goods seized and delivers it to the tenant, then the goods are said to be impounded, and resistance must cease.

If after a bailiff has legally gained admission and is ejected, he may return and demand admission, and then break in if necessary.

415. Penalty for Illegal Seizures. If a landlord distrains for more than the amount due, the tenant can enter an action and recover treble the amount of over-seizure; and in case of distraining before rent is due the tenant may recover double the amount of goods distrained.

If the landlord were to enter the house after sunset and prevent the removal of the goods, this will be illegal, and the tenant may recover the full value of the goods distrained. The landlord must wait until the next day, and then follow the goods if they have been removed. A distress on Sunday is also illegal.

The landlord is not liable for any illegal acts committed by the bailiff unless the acts were authorized or subsequently ratified by him. Therefore, if the bailiff is authorized to seize the tenant's goods and he seizes those of a stranger, or to seize on the premises and he seizes off the premises, or if he breaks into the premises, the bailiff only is liable. Also, if he were to seize and sell the exemptions illegally, the bailiff would be liable.

416. Exemptions from Seizure. The list of exemptions from landlord's warrant or under any execution is given in section 93, which see.

The goods belonging to third parties, not relatives, as visitors, boarders, or lodgers, are also exempt; also goods that may be on the premises for repair, or for any other purpose, if they are not in use by the tenant. But goods claimed by the husband, wife, son, daughter, daughter-in-law, son-in-law of the tenant are not exempt, nor those of other relatives if they live on the premises with the tenant.

Implements of trade, if they are not in actual use, may be distrained upon if there is not sufficient other goods to satisfy the debt.

Buildings and fixtures which the tenant has no right to remove, cannot be distrained upon, although there may be no other goods on the premises.

The floor of a skating rink could not be distrained.

417. Monthly Tenancy and Exemptions. On a monthly tenancy the exemptions only hold against two months arrears of rent. If the

monthly tenant owes for a longer period than two months, the landlord can distrain and sell to recover what is due over the two months.

418. Giving up Possession. The tenant who claims the benefit of the exemptions in case of a landlord distraining for rent, must give up possession of the premises forthwith, or be ready and offer to do so. The offer must be made to the landlord or his agent, and the person making the seizure is considered his agent for this purpose.

The surrender of the possession in pursuance of the landlord's notice is a termination of the tenancy, and the tenant has the option of paying the rent and costs and moving out, or to take his exemptions and move out without paying the rent. See section 93 for list of exemptions, and also section 417 for a monthly tenancy as to exemptions.

419. Seizing the Exempted Goods. If the tenant neither pays the rent nor gives up possession after being legally notified to vacate, the landlord may give him another written notice similar to the following, after which he can seize and sell the exempted goods to recover the amount of rent due and the costs. The notice must be something like the following:

Take notice, that I claim $ for rent due to me in respect of the premises which you hold as my tenant, namely: (here briefly describe them, giving the number and street, or lot, concession, etc.); and unless the said rent is paid I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.

Take notice, further, that if you neither pay the said rent nor give me up possession of the said premises after the service of this notice, I am by law entitled to seize and sell, and I intend to seize and sell all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

This notice is given under the Act of the Legislature of Ontario respecting the Law of Landlord and Tenant.

Dated this day of A.D., 18

To C. D. (Tenant). A. B. (Landlord).

After giving the above notice, if the tenant still remains in possession, the landlord can seize and sell the last article on the premises to recover the amount due and costs. If the tenant does not wish to lose his exemptions he must take them and move out immediately.

420. Goods Seized for Other Debts. If a tenant's goods have been seized for other debts the landlord cannot seize them again, nor sell them, but he may hold them until his claim is paid.

421. Notice to Quit. In case of a yearly tenancy, six clear months' notice must be given to quit. These must be calendar months, as in all other cases where months are used in contracts.

In case of a quarterly tenancy three months' notice must be given; and if the tenancy is monthly, then one clear month's notice must be given. If by the week, then a week's notice. There is no half-yearly lease. If a

person rented premises for six months, it would simply be six consecutive months, and if he held over that time one month's notice would be given to quit.

Where property is leased for a definite time, the lease expires at that date, and neither party need give the other notice to terminate it. The tenant may go out, or the landlord may lease the property to another party. But where this first period has been passed and the tenant still remains in possession, he then becomes a "Tenant at Will," and then, after that, when he wishes to vacate, or the landlord desires him to vacate, this notice must be given.

A notice to quit, given either by the landlord or tenant, should be in *writing*. An oral notice is sufficient, but it is better to give the notice in writing, as it is more easily proved. An ordinary letter containing the facts, handed to the other party, or sent by mail, will answer as well as a formal notice.

Notice to quit may be given by the agent as well as the principal; but an agent cannot appoint an agent to give notice.

422. Form of Notice by Landlord.

Please take notice that you are hereby required to surrender and deliver up possession of the house and lot known as No. 4 James street, in the village of Merritton, which you now hold of me; and to remove therefrom on the first day of June next, pursuant to the provisions of the statute relating to the rights and duties of landlord and tenant.

Dated this 29th day of April, 1896.

To Walter Winters, Tenant.

JAMES SMITH, Landlord.

423. Notice to Quit by Tenant.

I hereby give you notice that, on the first day of June next, I shall quit and deliver up possession of the premises I now occupy as tenant, known as house and lot No. 4 James street, in the village of Merritton.

Dated this 29th day of April, 1896.

To James Smith, Landlord.

WALTER WINTERS, Tenant.

424. Notice to Quit not Acted Upon. Upon the expiration of a notice to quit duly given by either party the tenancy ceases, and unless a fresh tenancy be afterwards created the landlord cannot distrain for subsequent rent, notwithstanding the tenant continues in possession for a year or more after the expiration of the notice.

But where a tenant holds on after the expiration of a notice to quit the landlord is entitled to recover by way of suit, the reasonable damages and costs sustained by him in an action at the suit of a party to whom he had contracted to let the premises.

425. Doubling the Rent or Evicting. If the tenant does not vacate the premises after his lease expires, and demand for rent, and notice to quit has been given, the landlord may double the rent by giving the tenant notice in writing to that effect; or the tenant may be evicted by obtaining an order from the County Judge.

426. Notice Claiming Double Rent.

To W. WINTERS, St. Catharines, Ont.

I hereby give you notice that if you do not deliver up possession of the house and premises situate No. 10 Queen street, in the city of St. Catharines, on the first day of June next, according to my notice to quit, dated the 25th day of April, I shall claim from you double the yearly value of the premises for so long as you keep possession of them after the expiration of the said notice, according to the statute in that case provided.

Dated the 20th day of May, 1896.

Witness: JAMES SMITH,
J. SAUNDERS. Landlord.

427. Raising the Rent. Simply giving notice to a tenant that at such a time the rent will be increased is not sufficient. The notice must be to vacate; that is, order the tenant out. Then after that the notice may be given for an advance in rent.

428. Fixtures must be something of a personal character. Anything that is affixed to the freehold so that it cannot be separated without doing serious damage to the freehold becomes a part of it.

Anything that is sunk into the ground, as a well, trees, buildings of stone or brick are the same as the soil itself, and therefore, a part of the freehold. But buildings placed on stone boulders, or posts, or plate, are fixtures, and may be removed without injury to the soil.

The machinery of a manufactory is also a fixture, and can be removed.

Where there is doubt as to whether a certain fixture should be regarded as a fixture or be held as part of the freehold, the presumption is always in favor of the freehold.

It is an axiom in law "that the expression of one thing is an omission of all the rest," and for this reason if anything is mentioned as a fixture, other things, though of a kindred nature, would be supposed to be omitted, and therefore remain a part of the freehold.

A tenant claiming anything as a fixture must remove the article promptly and make it known that he claims it, otherwise he waives his right to it.

As between the heir and the personal representative, the heir occupies the same position as the landlord and his right is, of course, prior.

A creditor can seize and sell immediately anything that has not become freehold, but any fixtures that have become freehold are governed by the same laws as real estate, and therefore cannot be sold until the execution has been in the hands of the sheriff at least one year.

429. Repairs necessitated by natural decay the landlord is supposed to make, also to keep in repair the roof, outside doors and locks; but all breakages are to be made good by the tenant.

430. Boarders and Lodgers. Lodgers are temporary lessees, and are subject to the same laws and have similar privileges in respect to the rooms they occupy as a regular tenant. Their goods are not liable to seizure for their landlord's rent.

In case a boarder's or lodger's goods are distrained for rent due by his landlord, he must serve the superior landlord or bailiff, or other person levying the distress, with a written declaration that the tenant has no right of property or beneficial interest in the goods or chattels distrained, or threatened to be distrained, and that they are the property or in the lawful possession of such boarder or lodger; and if he should owe the tenant for board or otherwise, he may state this amount and pay it over to the superior landlord or the bailiff or enough of it to discharge the landlord's claim if the boarder should owe more than that. With this declaration must be given an inventory of the articles referred to.

If the superior landlord or bailiff, after receiving this declaration and inventory, and after the boarder or lodger has paid over to him that much money, or offered so to do, still proceeds with the distress, he is guilty of an illegal distress, and the boarder may replevy such goods; and the superior landlord shall also be liable to an action.

Any such payment made by a boarder to the superior landlord is a valid payment on account due from him to the tenant.

431. Short House Lease.

This Indenture, made the fourth day of April, in the year of our Lord one thousand eight hundred and ninety-six, in pursuance of the Act respecting Short Forms of Leases, between James Smith, of the town of Thorold, in the County of Welland, gentleman, hereafter called the lessor, of the first part, and Walter Winters, of the same place, merchant, hereinafter called the lessee, of the second part;

WITNESSETH, that in consideration of the yearly rents, covenants and conditions hereinafter respectively reserved and contained by the said lessee, his executors, administrators, and assigns, to be respectively paid, observed and performed, the said lessor has demised and leased, and by these presents doth demise and lease unto the said lessee all the store and premises on Front Street, in the Town of Thorold, in the County of Welland, known as No. 1, in the Battle Block, including basement or cellar, and lately occupied by James Walsh & Co. as a boot and shoe store.

TOGETHER with all the rights, members and appurtenances whatsoever to the said premises belonging and appertaining; to have and to hold the said hereby demised premises with their appurtenances, unto the said lessee, his executors, administrators and assigns for the term of three years, to be computed from the fourth day of April, one thousand eight hundred and ninety-six.

Yielding and paying therefor, unto the said lessor, his heirs or assigns, the clear yearly rent or sum of three hundred dollars of lawful money of Canada, in even portions of quarterly instalments, on the fourth days of July, October, January and April, in each and every year during the continuance of the said term, without any deduction, defalcation or abatement whatsoever; the first payment to be made on the fourth day of July next.

AND the said lessee for himself, his heirs, executors, administrators, and assigns, hereby covenant with the said lessor, his heirs and assigns, to pay rent, and to pay taxes, and to repair; and that the said lessor may

enter and view state of repair; and that the said lessee will repair according to notice; and will not assign or sub-let without leave; and will not carry on any business that shall be deemed a nuisance on the said premises; and that he will leave the premises in good repair.

And also, that if the term hereby granted shall be at any time seized or taken in execution, or in attachment, by any creditor of the said lessee, or if the said lessee shall make any assignment for the benefit of creditors, or becoming bankrupt or insolvent shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, the then current quarter's rent shall immediately become due and payable, and the said term shall immediately become forfeited and void.

AND it is hereby declared and agreed that in case the premises hereby demised or any part thereof shall at any time during the term hereby granted be burned down, or damaged by fire, so as to render the same unfit for the purposes of the said lessee, then, and so often as the same shall happen, the rent thereby reserved, or a proportionate part thereof, according to the nature and extent of the injury sustained, and all remedies for recovering the same shall be suspended and abated until the said premises shall have been rebuilt or made fit for the purposes of the said lessee.

PROVISO for re-entry by the said lessor on non-payment of rent, whether lawfully demanded or not; or on non-performance of covenants; or seizure or forfeiture of the said term for any of the causes aforesaid.

The said lessor covenants with the said lessee for quiet enjoyment.

In witness whereof, the said parties have hereunto set their hands and seals.

Signed, Sealed and Delivered in the presence of CHARLES SUMMERS. — JAMES SMITH. [L. S.] WALTER WINTERS. [L. S.]

432. Farm Lease.

In a Farm lease other clauses are usually inserted, similar to the following, defining particularly how the land is to be tilled, crops to be raised, disposition of straw, etc.:

AND that the said lessee will, during the said term, cultivate, till, manure and employ such part of said demised premises as is now, or shall hereafter be brought under cultivation, in a good husband-like and proper manner, so as not to impoverish or injure the soil, and plough said land in each year during said term (seven) inches deep and at the end of said term will leave the land so manured as aforesaid. AND will crop the same during the said term by a regular rotation of crops in a proper farmer-like manner, so as not to impoverish or injure the soil of the said land, and will use his best and earnest endeavors to rid said land of all docks, wild mustard, red roots, Canada thistles and other noxious weeds. AND will preserve all orchard and fruit trees (if any) on the said premises from waste, damage or destruction. AND will spend, use and employ, in a husband-like manner, upon the said premises, all the straw and dung which shall grow, arise, renew, or be made thereupon. AND will allow any incoming tenant to plough the said land after harvest in the last year

of the said term, and to have stabling for two horses and bedroom for one man. AND will leave at least ten acres seeded down with timothy and clover seed.

AND shall not nor will during the said term cut any standing timber upon the said lands, except for rails or for buildings upon the said demised premises, or for firewood upon the premises, and shall not allow any timber to be removed from off the said premises. AND ALSO shall and will, at the cost and charges of the said lessee, well and sufficiently repair, and keep repaired, the erections and buildings, fences and gates erected, or to be erected, upon the said premises.

CHAPTER XVIII.

COMMON CARRIERS.

433. There are three classes of carriers:

1. The person who carries goods without charge. Such a person is not liable for slight or even common negligence if loss should occur. The person for whom the goods are carried is responsible, except for the grossest of negligence.

2. The one who carries goods privately for hire. That is one who does not make it his business to carry goods, but still does so occasionally and takes pay for it when he does. Such a person is liable only for common negligence.

3. The common carrier is a person who holds himself out to the public as carrying goods for hire. Such are liable for even very slight negligence, and must exercise the greatest caution.

Examples of this class of common carriers are: Railroads express companies, steamboats and vessels, draymen, carters, transfer companies, etc.

434. Obligation to Receive Goods. Common carriers mentioned in the third class as railroads, etc., are obliged to accept goods offered for carriage, unless they have no room for carriage, or unless they are a dangerous class, as explosives. He has a right to know what the goods are that are offered for carriage.

A common carrier, a warehouseman and wharfinger are almost the same thing. A warehouseman is bound to take goods offered for carriage if he has the convenience for carrying or storing them. He has a right, however, to know what the goods are, and if anything dangerous, as dynamite, may refuse them.

A warehouseman's liability ends when he places the goods on the specified conveyance.

435. Responsibility of Carriers. The carrier is responsible for the safe delivery of the goods at their destination.

The original carrier is liable till the goods reach their destination, although they are to be delivered past the end of his line or route, unless he designates himself as a *forwarder* of the goods after the end of his

route has been reached, in which case he is only liable as far as he carries the goods. His responsibility may also be limited by the terms of the contract.

If goods are sent to be sold by a common carrier, he then incurs a double liability: First, to deliver the goods safely; and secondly, to return the money. The goods must be accepted before the carrier's liability commences.

If a vessel is chartered to a party, he is liable instead of the owner.

If a common carrier agrees to deliver goods in a certain time and does not do so, he is liable in damages to the person sending them.

Should he deviate from the regular route, although for good reason, and there meet with an accident, he is liable for all losses that may occur.

In case a warehouseman is not informed as to the mode of conveyance, he must use his discretion.

A common carrier is liable for all goods entrusted to his care, unless the damage done is caused by the acts of God or the Queen's enemy. A storm, an earthquake, a sudden inundation—in fact, everything that cannot be traced directly or indirectly to the acts of men—is considered an act of God; but a fire arising from other causes than lightning is not.

In case a carrier is unavoidably delayed, as by the freezing of a canal, he must take due care of the goods during the delay.

Enemies of the State or country, as an invading army or pirates, are what are termed the Queen's enemies, and for the acts of these a carrier is not responsible. But in case of private depredations, even train robberies, he is responsible in all cases.

He is also not responsible if the goods are not properly packed, nor for breakage or decay, in case of perishable goods.

A carrier can, however, rid himself of responsibility by a general notice to the public, or by a special notice in the shipping bill, that he will not be responsible in certain cases, or over a certain amount. If an accident, however, occurs, the onus lies with the carrier to show that he has not been guilty of negligence.

The notice in the shipping bill is to be read least favorably to the carrier. It throws the onus of proof, however, on the shipper to show that the carrier was guilty of negligence.

If a person ships goods and receives a contract without reference to the notice, whether he knows of the notice or not, the contract whether written or printed nullifies the notice.

Unless it is so mentioned, a carrier is not responsible for any unavoidable delay.

The position of a forwarding merchant is very similar to that of a common carrier. His liability is principally gathered from his Bill of Lading.

The Government is not liable for the loss of a letter. The post-office authorities may, however, if proved guilty, be held responsible.

436. Bailment is a delivery of goods by bailor and an acceptance by bailee on a trust, expressed or implied, to be delivered by said bailee as soon as the contract is complied with. The bailor is the one owning the property; the bailee is the one to whom the property is entrusted. There are various classes:

437. Goods Left without Hire. Where goods are left in care of another, without hire, merely taken as a matter of friendship, such a person would only be liable for gross neglect.

438. Goods Left for Hire. Where goods are left in care of another person for hire, such a person would be liable for common negligence.

439. Goods to be Sold. Where goods are left in the hands of a person to be sold on commission, the consignee in such case must exercise ordinary diligence in caring for the goods. He has a lien on the goods for all his charges and commission.

440. Goods only Borrowed. Where property is borrowed to be used for the benefit of the borrower; in such case the person borrowing, and giving nothing as compensation, is required to exercise the utmost diligence in caring for the property, and will be liable to make good any damage.

441. Goods as Collateral Security. When property is left as a pledge or collateral security for a debt or loan, the holder must use ordinary diligence in caring for the goods. If the debt is not paid, the property may be sold for the debt, but what may be over the amount of the debt must be returned to the owner who gave it in pledge.

442. Property Hired. Where one person obtains the use of property from another person and pays for its use, the borrower is liable for ordinary care. He is entitled to its exclusive use for the purpose agreed upon, and if he uses it for any other purpose he renders himself liable for any damage resulting therefrom, and also for additional hire.

As the parties are benefited by such borrowing for hire, if any damage occurs, when using the property as agreed upon the borrower is not responsible, unless he did not exercise ordinary care.

443. Pawnbrokers are persons who loan small sums of money, and take jewelry, furniture and other similar kinds of property as security. They must procure an annual license from the municipality where the place is located. The fees are $60. They must exhibit a sign over their door bearing the name and the word "Pawnbroker," in large letters. The penalty for neglecting to exhibit such sign for over one week is $40. The penalty for pawnbroking without a license is $50 for every pledge taken, with costs of prosecution.

The penalty for a hotelkeeper to receive goods in pawn is the restitution of the article and a fine not exceeding $20. (See R. S. O. chap. 155.)

CHAPTER XIX.

RAILWAYS.

444. The law requires that for a train running through the country a bell must be sounded or a whistle blown eighty rods before reaching a crossing, and be kept blowing or sounding until the engine has passed the crossing.

Foot passengers are supposed to look out for themselves.

A railroad is not responsible for the life of any person walking on the track.

A railroad company must give a check for all personal baggage up to one hundred pounds weight for one person or two hundred pounds for man and his wife, provided there is a loop or handle on which to fasten it, under a penalty of eight dollars, and refunding the passenger's fare each time they refuse.

Railroad companies are liable for damages in case of any unreasonable delay. Not for any imaginary damages, but for what loss can be shown to have been suffered.

They must at every station write, or cause to be written, in a conspicuous place, the time when, to the best of their knowledge, any overdue train will be likely to arrive. This does not, however, relieve them of their liability for damage, in case any is sustained through the delay.

A man buying his ticket after the train is due cannot, of course, sue the company for damages, as he is aware of the train being late just as much as the company was.

Railroad companies are also obliged to provide rooms for their passengers to wait in, and also to keep these rooms free from tobacco smoke and other kindred nuisances.

Trains must not be run at a greater speed than six miles an hour through a city or any thickly-populated community.

If anything of value, as a gold watch, is in the baggage, the company must be informed, so that due care and caution may be taken with it. The company would not be responsible if they were not informed of it being included with their ordinary baggage.

A man paying his fare on the train must present a reasonable amount that the conductor could be expected to change.

Every conductor is obliged to have a badge on his cap, or a passenger is not obliged to give his ticket to him.

A passenger who refuses to pay his fare, or who for any other cause for which he may be put off the train, can be put off at any station or ordinary stopping place, or near any dwelling-house.

The company is liable in damages for any injury sustained by a person getting off a train while in motion, under the countenance of the conductor.

If a person jumps off a moving train without the knowledge of the conductor, or contrary to his will, the company is not liable for any damages.

But if a person jumps off a train when a collision is liable, and gets hurt, the company is responsible, even though he could not have been injured had he remained in his seat.

A person who has a ticket and cannot find it, is being put off, and offers to pay his fare, and is still ejected, may collect damages.

A ticket bought at a station for a certain place is a contract that the train next leaving that station stops at that place. This is the reason why a ticket agent will not sell a passenger a ticket if the train does not stop at that station, at which the ticket is wanted, as the company would be liable for damages unless that train stopped there.

A return ticket purchased at regular rates is good for a continuous

trip each way, until used, no matter how long after date, if you are able to fight the company.

A return ticket which cannot be used for the return within the time, may be returned to the head office, and the difference between its price and the single fare will be refunded.

445. Telegraph Companies agree not to divulge the contents of any message to any except to the person to whom it is addressed.

The company does not hold itself responsible for accuracy in transmitting the message unless the sender pays for repeating back the message. The company would then be responsible.

446. Promptness. The company is responsible for any loss sustained by an unnecessary delay.

Never put "in haste" on a telegraph message, for it would only be laughed at by the operators. Never pay anything extra for having a message quickly transmitted, for it does nor hasten it any.

CHAPTER XX.

INSURANCE.

447. There are four general classes of insurance: Fire, Life, Marine and Accident, that will be treated in this work.

448. Fire Insurance. The Principle of fire insurance is indemnity.

In this case there is the greatest necessity for good faith, and therefore the insured should be very careful to disclose all facts material to the risk.

449. Cases that Destroy or void the insurance policy.

1. If the building being insured is vacant at the time, and the owner does not disclose the fact, the policy is void from its inception.

If it should become vacant afterwards, and the company is not notified, the policy would be vitiated.

2. If there were an incumbrance on the property, and the owner said there was not, the policy would be void.

If any were placed on afterwards, the company must be informed.

3. If the building were closer to other buildings than was stated in the application, or if considerable quantities of coal oil, gunpowder or other inflammable material were on the premises, and these facts not disclosed in the application, it would destroy the policy.

4. CHANGES ON BUILDING. Where any considerable change is made in the building, that requires the presence of mechanics, the company must be notified before beginning, otherwise, in case of fire, the company would be free. A mechanic's risk may be secured for a small extra fee.

5. CHANGE OF OWNERSHIP. In case of a change of ownership, the name of the new proprietor must be given and accepted, and the old one

released. If the company prefers not to take the risk under the new owner, it may cancel the risk by repaying the *unearned* portion of the premium that had been paid. If the old owner does not want the policy transferred, he may have the *unearned premium* returned to him. In this case it would not be a proportionate sum to the whole premium, but the company will charge the regular rate for the shorter term and refund the balance.

6. Two or More Policies. If property is insured in more than one company without the consent of all the companies, no insurance whatever would be paid by any of them in case of fire.

450. Change of Goods. If goods are changed from one building to another the consent of the company must be obtained. Then the insurance remains in force in the new building.

451. The Insurance Agent is regarded as the agent of the insured, and not that of the company, hence the insured must be very careful what answers are given to the various questions in the application.

The company will stand rigidly on the printed conditions on the application you have the agent fill out, and may be expected to evade payment of a loss if there is a reasonable chance.

Therefore, the insured must see that all the facts material to the risk are honestly and truly set forth in the application.

452. Floating Policies. When "floating" policies are taken out, the amount of insurance paid is the loss at the time of the fire, limited, of course, by the amount of insurance. This policy holds good so long as the quantity is kept up, no matter whether it is the identical goods insured or not.

453. Notice of Fire. In case of fire occuring, according to the rules of most companies notice must be given immediately, but the exact meaning of that term has not yet been decided. Where nothing is said by the company, the statutory condition is one year, but whatever the company's printed conditions are will hold if reasonable. In any case the company should be notified immediately.

454. Adjustment of Losses. Usually the amount of actual loss is paid in full to the amount insured. Some companies use what is called an "average clause," by which the company only pays two-thirds of the loss. Insurers should be careful that they do not take a policy of that form unless the rate of premium is also one-third lower than other companies.

As soon as the company is notified of the loss it will send an agent or adjuster to inspect the premises and estimate the loss.

The onus of proof of what was in the building at the time of the fire rests with the insured.

The value of the articles, itemized, has to be verified by affidavit, and a false statement would endanger the claim against the company.

The company may either rebuild or repair the articles injured, or pay the loss in money.

455. Marine Insurance. A marine policy is taken out by the owner or charterer of a vessel when it is ready to start on a voyage.

Sometimes the insurance is for a certain number of voyages, sometimes for a month, six months, or for a year.

The cargo is necessarily insured just for the voyage.

In marine insurance there must be a guarantee that the ship is seaworthy; that is, that she is properly equipped and manned, and also capable of resisting an ordinary storm on the route on which she runs.

A partial crew, or the want of an anchor, would render a vessel unseaworthy.

The burden of proof of seaworthiness lies with the party seeking to insure.

The cargo of a vessel, or her earnings, sometimes called "freight," can also be insured.

In case of a ship being in distress, and a part or the whole of her cargo having to be thrown overboard, where there is no insurance, the loss is divided between the vessel, the cargo and the freight, each bearing its proportionate amount.

Marine insurance indemnifies for all the various losses which may result from the perilous sea voyages, as well as of fire. These include storms, theft, and even piracy and capture in time of war; also where a portion of the cargo may be thrown overboard in time of danger so as to save the remainder.

456. Amount of Loss Paid. All marine policies have the average clause, which leaves them liable to pay the loss only in the proportion that the insurance bears to the value of the vessel or cargo insured. A cargo worth $12,000 insured for $8,000, in case of loss the company would only pay two-thirds of $8,000.

457. When at Sea. A ship may be insured while she is on her voyage, and it is not known whether she is safe or whether lost. The insurance is valid, even though the vessel were lost at the time.

458. Life Insurance. The principle of life insurance is investment. There are various forms of companies doing a life insurance business:

1. The stock companies.
2. The mutual companies.
3. The assessment societies.

459. Who may Insure. Any person may insure his own life, and also insure for as large a sum as he can afford to pay for, and in as many companies as he pleases.

A husband may insure the life of his wife or child, or *vice versa.*

A creditor may insure the life of a debtor. In the latter case the creditor can only recover to the extent of his debt, the remainder going to the deceased's legal representatives.

Members of a partnership firm may insure the different partners.

460. The Beneficiary. The person to whom the policy is made payable is called the beneficiary.

1. The insured may make it payable to himself. In this case he may

borrow money on it without any other person signing the assignment; also, in this case it is liable to be seized for debt in case of insolvency.

2. If made payable to a wife or child, or other person, then it cannot be assigned without that person's signature. Such a policy cannot be touched by creditors, except in certain cases, to the extent of premiums paid, in case of the insolvency of the insured.

3. If the beneficiary is not a natural heir, but some other person, and the insured dies without a will, the money cannot be paid to the beneficiary, unless a creditor, as the laws of heirship will give it to his rightful and legal heirs, notwithstanding the wording of the policy.

461. What Voids a Policy. Certain misrepresentations will void a policy. An untrue statement in regard to the age, or the causes of death of brothers or sisters, parents or grandparents, etc., also are material, and void the policy. For instance, if several members of the family had died with consumption, or with cancer, etc., and other causes were given, it would void the policy, if the insured subsequently died by or through the effects of such disease; and even to state an untruth in regard to the insured being married or single has been held to void the policy.

462. Notice of Death should be given as soon after the event occurs as would be seemly.

463. Action to Recover the insurance money must be taken within the time fixed by the policy, if the company refuse to settle.

464. Suicides. Persons who in their right minds commit suicide vitiate their policies. Persons who, while temporary or permanently insane, destroy their own lives do not affect their policies.

465. Accident Insurance Policies are those which provide indemnity in case of accident, paying so much per week for a certain number of weeks if disabled, or the whole policy in case of death through accident. Death occurring through sickness would not draw the insurance. A person murdered would not be held to be an accident, hence the company would refuse to pay the insurance. In event that the case were decided to be manslaughter instead of murder, then the insurance would be collectable.

CHAPTER XXI.

GUARDING AGAINST FRAUD.

466. The itinerant swindler is always operating somewhere, in some line. Every class in the community has this enemy to watch against.

The following suggestions may be of service to farmers particularly:

1. Never give money or a note, except it be to a well-known firm, until the article purchased is in your possession and found to be according to agreement.

TORONTO, *September 16th, 1896.*

Six months after date I promise to pay Jas. Brown, or bearer, when I sell six harrows the sum of ONE HUNDRED AND SEVENTY-FIVE DOLLARS *when collected, to be payable at Toronto, with interest at eight per cent. per annum if not paid when due.*

Witness: L. L. Smith *Wm. J. Simmons* *Agent for Jas. Brown.*

2. An article or a machine having been ordered, which, upon arrival at the freight or express office is found to be not according to agreement, should not be received. Of course, if the article is according to contract, it must be received if delivered at the place and time agreed upon; but if not according to contract the article should be refused, and payment therefor cannot be enforced.

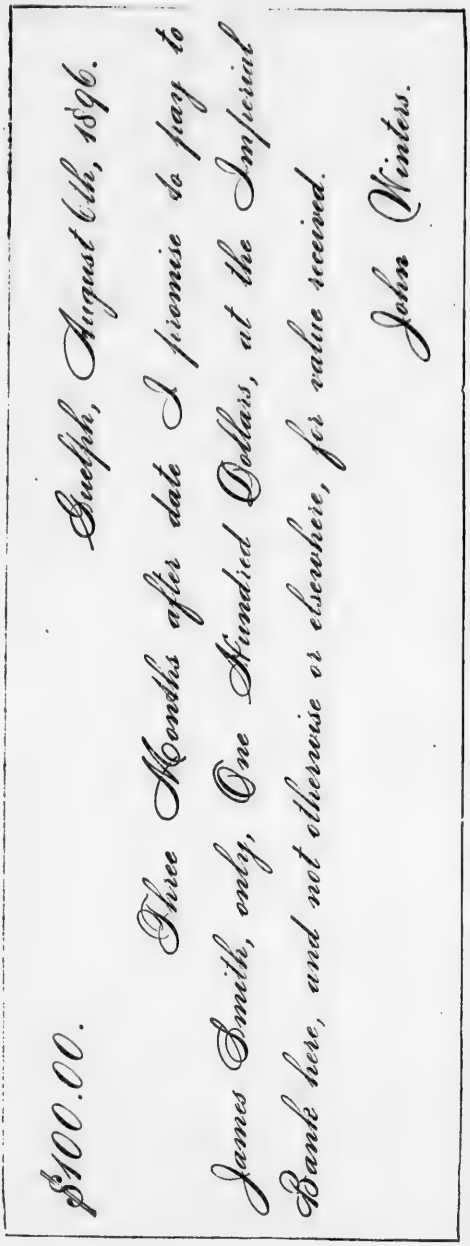
3. Always take a copy of every agreement that is made in writing, or any order given for machinery, goods, etc. The agent should sign the company's name, together with his own, to the copy you retain, which should also be marked "copy."

4. In dealing with an agent, or any other person, where a written contract, agreement, or note is made, be assured of this, that nothing but the *written document* will be considered in court. No matter what else the other party promises in addition by word of mouth or even in writing, if on a separate paper or not referred to specially in the written contract as a part of the contract, it is utterly worthless.

5. In dealing with the agent of a strange firm, never sign any lengthy document purporting to be an order or agreement, as such documents have been a fruitful source of fraud.

467. Swindling Note. The form of swindling note shown on this page, which is made by simply cutting off the right hand end of what was supposed to be simply an agreement to sell six harrows, to be paid for after they were sold, is an old one. After the end is removed and the witness' name at the bottom is cut off, it is a regular note which could be sold to any person who knew nothing of the swindle, and by being thus transferred to an innocent holder for value, it would be collected. The swindle does not always take this form, but sometimes the note would be in the middle of a sheet, and by cutting away the top, bottom and sides, a regular form of note would be left. This illustration, however, is enough to put thoughtful persons on their guard against all similar forms of trickery.

If an occasion should occur when it would seem desirable to enter



into an agreement requiring such an instrument, it should not be signed except in the presence of a witness. Even then, instead of signing their printed forms, it would be safer to write out the agreement on plain paper.

468. Note Preventing Fraud. The form of note shown on this page is the best protection against the frauds and swindles that have caught even the shrewdest of men that can be devised. In purchasing a machine or any line of goods from a strange firm without opportunity for a sufficient test, write out such a note as this on plain paper instead of using their blanks. This note is valid and can be collected as well as any other form, provided there is no fraud, but if there is fraud in connection with the transaction, it could not be collected. It is made non-negotiable, so that the payee cannot transfer it to an innocent holder for value to be collected. It can be transferred by assignment, but in that case the purchaser does not get any better title to it than had the original holder, hence the maker is safe. The words "and not otherwise or elsewhere" are not absolutely necessary, but (like the words "value received") it is better to use them, as they are evidence that there was a decided intention that the note should not be transferred, and that it should not be payable at any other place than the one specified.

CHAPTER XXII.

EXTRADITION.

469. Extradition. The following are the cases for which a person may be extradited from the United States to Canada, or *vice versa*:

1. Murder, or attempt or conspiracy to murder.
2. Manslaughter.
3. Counterfeiting or altering money, and uttering counterfeited or altered money.
4. Forgery, counterfeiting or altering, or uttering what is forged, counterfeited or altered.
5. Larceny.
6. Embezzlement.
7. Obtaining money or goods, or valuable securities, by false pretences.
8. Crimes against Bankruptcy or Insolvency Law.
9. Fraud by a bailee, banker, agent, factor, trustee, or by a director, member, or officer of any company, which fraud is made criminal by any act for the time being in force.
10. Rape.
11. Abduction.
12. Child stealing.
13. Kidnapping.
14. False imprisonment.
15. Burglary, housebreaking or shopbreaking.
16. Arson.
17. Robbery.
18. Threats, by letter or otherwise, with intent to extort.
19. Perjury or subornation of perjury.
20. Piracy by Municipal Law or Law of Nations, committed on board or against a vessel of a foreign State.
21. Criminal scuttling or destroying such a vessel at sea, whether on the high sea or on the great lakes of North America, or attempting to do so.
22. Assault on board such vessel at sea, whether on the high seas or on the great lakes of North America, with intent to destroy life or to do grevious bodily harm.
23. Revolt, or conspiracy to revolt by two or more persons on board such a vessel at sea, whether on the high seas or on the great lakes of North America, against the authority of the master.
24. Any offence under either of the following Acts, and not included in any forgoing portion of this schedule: (*a*) An Act respecting Offences against the Person; (*b*) The Larceny Act; (*c*) An Act respecting Forgery; (*d*) An Act respecting Offences relating to the Coin; (*e*) An Act respecting Malicious Injuries to Property.
25. Any offence which is, in the case of the principal offender, included in any foregoing portion of this schedule, and for which the fugitive criminal, though not the principal, is liable to be tried or punished as if he were the principal. (40. V. C. 25, 2nd schedule part.)

CHAPTER XXIII.

WILLS.

470. A Will is a written instrument left by a person in which he gives directions for the disposal of his property after his death. A person to make a valid will must be of the age of twenty-one years, of sound mind and free from constraint or any undue influence. The lawyer's toast, "here's to the man who writes his own will," should not be forgotten by laymen. Not everyone is fit to write a will. A will should not be the last act of a man's life. No wonder that so many of them are broken in the courts; dictated under intense excitement, drawn in haste, they do not represent the deliberate judgment of the testator or meet the requirements of natural justice.

Soldiers in service may dispose of their effects by simply signing a written statement of how they wish their property to be disposed of.

Sailors at sea may also, in the same way, without any of the formalities of a will, bequeath their effects as they wish.

471. Executor is the person named in the will as the one who is to carry out its provisions and look after the property until its distribution among the heirs.

An executor may enter at once upon the work of carrying out the provisions of the will, as soon as it has been publicly read, before being proved. It was formerly the rule that if a debtor were appointed executor, his debt was forgiven, but this is no longer the case.

An executor, who is believed by the heirs to be acting unwisely or unjustly, may be compelled to show his books before the County Judge by any of the heirs who is twenty-one years of age.

An executor that is found to be wasting the estate or committing acts of injustice against the heirs, may be removed by proceedings in the Surrogate Court.

472. Administrator is the one appointed by the Surrogate Court to settle the affairs of the estate of a person who dies without making a will.

An administrator may apply for authority to act in that capacity fourteen days after the death of the owner of the estates, and settlement must be made within one year or the administrator becomes personally liable for any loss that may occur.

Where the wife administers on her deceased husband's estate, she cannot be compelled to do so under one year.

Where a man, unmarried, dies without leaving a will, the father or mother, if living, and if they be dead the eldest brother, is entitled to administer.

A person administrating must first obtain the consent of all the heirs; that is, if he be not the father, wife, brother, sister or child of deceased.

473. Heir or Legatee is the one who receives property under the will. A legacy to a friend who dies before the testator, lapses.

A legacy to the testator's child who may have children, will go to those children if the legatee should die before the testator.

A pecuniary legatee, who is also a debtor to the testator, must account for the debt on payment of his legacy. If the debt has been outlawed it would be optional with the executor whether to deduct it from the legacy or not.

474. Who may Draw a Will. The testator may write his own will if he desires to do so, and every man should be able to write his will. Any other person who can write clearly the desires of the testator, but prudence would dictate that none but a person of experience and ability should be entrusted with so important a matter.

475. Requisites to be Observed. It should contain :

1. The name in full of the testator, his address and calling.
2. It should plainly state that this is his last will and testament.
3. That it revokes all former wills and bequests.
4. How debts and expenses are to be provided for.
5. A clear and definite statement of how the property is to be divided, and the particulars of every bequest.
6. It should give the Christian names in full of all the legatees.
7. Executors should be appointed who have been previously consulted.
8. It should be properly dated and witnessed by two persons not interested ; that is, those who are not legatees.
9. The testator should sign in the presence of the witnesses.
10. The witnesses should sign in the presence of each other, as well as that of the testator.
11. The witnesses may be minors if old enough to understand what they are doing. A witness might be an executor.

476. Proving of a Will. After the decease of the testator, as soon as convenient or becoming, the will should be read in the presence of the parties interested, and then proved in the Surrogate Court. None but a lawyer can prove a will.

477. Changing of Wills. When a person makes a will, and then living several years longer, it often becomes necessary to make a new will on account of the many changes having taken place, in which case it is better to burn the old one.

A will is revoked by the testator afterwards marrying. He may confirm the former will afterwards, and thus make it legal, the confirmation being signed and witnessed. It is safer, however, to make a new will.

478. Codicil. When only a few minor changes might be desired to be made in a will, sometimes, instead of making a new will, it is as well simply to make a codicil to the will. Such codicil should set forth clearly :

1. That it is a codicil, and describe accurately the will it belongs to.
2. It should be signed and witnessed the same as a will, but using the word "codicil" in place where "will" is used.
3. If it gives a legacy to one who already had a bequest, it should state whether this is a second bequest or merely a confirmation of the one already given.

4. If advances had been made during lifetime to a child on account of legacy, such amount should be noted in the codicil.

5. If there has been a change in the property, either by the acquisition of more or the disposal of any part of the former, the codicil should regulate the bequests accordingly.

479. Charitable Bequests. According to the Statutes of Ontario, any charitable bequests for churches, educational institutions, etc., if not made at least six months before the decease of the testator, may be set aside by the courts.

480. Preventing Litigation. Sometimes in making a will the testator adds a clause that in the event of any person commencing proceedings to break the will, such person shall not receive any portion whatever, even though they had been mentioned in the will to receive a legacy.

481. Form of Will—

THIS is the last Will and Testament of me, James Smith, of the City of Toronto, in the County of York, and Province of Ontario, merchant, made this fourth day of April, in the year of our Lord one thousand eight hundred and ninety-six.

I revoke all former Wills or other Testamentary Dispositions by me at any time heretofore made, and declare this to be my last Will and Testament.

I direct all my just debts, funeral and testamentary expenses to be paid and satisfied by my executors hereinafter named, as soon as conveniently may be after my decease.

I give, devise and bequeath all my real and personal estate which I may die possessed of or interested in, in the manner following; that is to say:

I give, devise and bequeath to my beloved wife, Florence Ethel Smith, Lot No. 6, in the second Concession of the Township of York, County of York, and Province of Ontario, containing by admeasurement one hundred acres, be the same more or less; also Lot. No. 4, on the east side of Simcoe Street in the City of Toronto, containing by admeasurement three-quarters of an acre, be the same more or less, which is my present residence, and all appurtenances connected therewith, with all my household goods of which I am possessed.

I give, devise and bequeath to my son, Charles Edmund, the farm known as the Walnut Grove Place, being Lot No. 8, in the first Concession of the Township of York, in the County of York, together with all the crops, stock and utensils which may be thereon at the time of my decease; and also the property in the City of Toronto, Ont., known as the Arlington Block, being Lot. No. 18, on the north side of King Street, subject to a legacy of five hundred dollars to be paid to my nephew, John Alexander Smith, in two equal annual instalments of two hundred and fifty dollars each without interest, the first payment to become due and payable one year after my death, said legacy to be the first charge on the said property.

I give, demise and bequeath to my nephew, John Alexander Smith aforesaid, a legacy of five hundred dollars hereinbefore provided for. All the residue of my estate not hereinbefore disposed of I give, devise and bequeath unto my beloved wife, Florence Ethel Smith.

I give, devise and bequeath to my daughter Grace, wife of James D. Chamberlain, twelve shares in the capital stock of the Provincial Natural Gas Company, which now stands in my name on the books of said company; also two thousand dollars in cash.

AND I nominate and appoint my wife, Henry Simmons and Donald Henderson, all of the City of Toronto, in the County of York, to be co-educators of this my last Will and Testament, hereby revoking all former wills by me made.

IN WITNESS WHEREOF I have hereunto set my hand the day and year first above written.

JAMES SMITH.

Signed, Published and Declared by the said James Smith, the testator, as and for his *Last Will and Testament*, in the presence of us, who both present together at the same time, in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses.

CHARLES SUMMERS.
F. W. WILLIAMS.

482. Law of Heirship. A husband dying without leaving a will if there are children the wife inherits one-third, and the other two-thirds go to the children in equal proportion. If there are no children, then the wife is entitled to $1,000 out of the personal estate, and to one-half the remainder, the balance going to the natural heirs of the deceased. If the estate after paying the expenses of administration, etc., does not exceed $1,000, the wife receives all. In case the wife is dead and there are children, then all goes to them.

A wife having separate property in her own name and dying without leaving a will if there are children the husband receives one-third, and the remaining two-thirds go to the children in equal proportion. If there are no children then the husband is entitled to one-half, the remaining half going to the heirs of deceased. In case the husband is dead and there are children, then all goes to them. The children of two wives or two husbands share equally.

An unmarried man or woman dying without leaving a will the father and mother and surviving brothers and sisters share equally If parents are dead then the surviving brothers and sisters come next; if there are no parents or brothers or sisters then the grandparents, if living, get all; if there are no grandparents, then nieces and nephews, uncles and aunts equally.

483. Succession Duties. In Ontario succession duties do not apply to any estate that does not exceed $10,000 or an estate that does not exceed $100,000, which is willed to parents, child, grandchild, daughter-in-law, or son-in-law, or to charitable and religious purposes.

Property exceeding $100,000 and passing to such persons a tax of $2.50 on each $100 is levied; when it exceeds $200,000 and so passes, $5 on every $100. When property exceeds $10,000, and does not pass to such estates 10 per cent. on value; when it passes to grandparents, uncles or aunts, brothers and sisters, nephews and nieces, $5 on every $100. When the property bequeathed to any one person does not exceed $200 it is exempt.

CHAPTER XXIV.

MECHANICS' AND WAGE-EARNERS' LIEN ACT.

484. Nature of Lien. According to the provisions of the above statute of 1896, unless he signs an express agreement to the contrary, every person who performs any work, or who furnishes any material to be used in constructing any building, or bridge, or fence, or anything, in fact, from a cistern to a railroad, for any owner, contractor or sub-contractor, has a lien upon the property thus erected and upon the land occupied thereby for the price of such work or material.

485. Limit of Liens. The lien whether claimed by the contractor, sub-contractor or other person, cannot make the owner liable for more than the sum justly owing by the owner to the contractor (which includes the wages or material for which that contractor is liable to those under him).

486. What a Lien Claim may Include. A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein. Each lien must however be verified by affidavit.

487. Protecting Owners. The Act requires the owner as the work progresses to deduct and retain for thirty days after the completion or abandonment of the work twenty per cent. of the sum due the contractor when the contract does not exceed $15,000, and where it exceeds that sum then fifteen per cent., with which to satisfy the lien claims. The owner of the property is not liable to any greater amount than such twenty per cent. (or fifteen per cent. as the case may be) for liens of which he has not, before making payments, received notice in writing.

But if he should not retain the percentage here mentioned and any liens were filed within the thirty days the property will be held liable for them up to the twenty per cent., or fifteen per cent., as the case may be.

488. Registration of Liens. A claim for a lien may be recorded in the Registry Office, or the Land Titles Office for the district in which the land is situated, and shall state:

1. The name and residence (1) of the person claiming the lien, (2) of the owner or supposed owner of the property to be charged, and (3) of the person for whom and upon whose credit the work was performed or the material furnished, and also the time within which the work was or was to be done or materials furnished or placed.
2. A short description of the work done or materials furnished.
3. The sum claimed to be due or to become due.
4. A description of the land (number of lot, etc.) to be charged sufficient for the purposes of registration.
5. The date of expiry of the period of credit (if any) agreed for payment for the work, or the material where credit has been given.

Every claim must be verified by affidavit of the person claiming the lien, or his agent or assignee, and the person making the affidavit must declare that he has a personal knowledge of the matters deposed to.

A lien, when registered, becomes an encumbrance against the property. The fee for registration is twenty-five cents. If several persons join in one claim a further fee of ten cents is charged for every person after the first.

489. Time for Registering Liens. A claim for a lien by a contractor or sub-contractor may be registered before or during the contract or within thirty days after its completion.

A claim for lien for materials may be registered before or during the furnishing thereof or within thirty days after furnishing or placing the last of the material.

A claim for lien for services or work may be registered any time during the performance of the service or work or within thirty days after the completion of the service or the last day's work for which the lien is claimed.

Every lien not registered within the time mentioned here ceases, unless action has been brought to realize the claim and a certificate thereof duly registered.

Thirty days is the time allowed within which to register the lien for Ontario, Manitoba and North-West Territories; and thirty-one days for British Columbia.

490. When Liens Cease. Every lien which has been duly registered absolutely ceases to exist after ninety days from the time when the work or service ended, or the materials were furnished, or the expiry of the period of credit, unless in the meantime an action to realize the claim under the provisions of this Act has been instituted and a certificate thereof duly registered.

The registration of a lien ceases to have any effect after the expiration of six months from the registration thereof unless the lien shall be again registered within that time, or proceedings have been commenced to realize the claim and a certificate thereof been duly recorded.

491. Priority of Lienholders. Liens have priority over all judgments, executions, assignments or garnishments issued after such lien arises, and over all payments made on account of the sale of the property or a mortgage thereon after notice in writing of such lien to the person making such payments or after the registration of the lien.

Among the lienholders themselves each *class* shall share the proceeds recovered *pro rata* according to their several classes and rights.

492. Priority for Wages. Every mechanic or laborer whose lien is for wages shall, to the extent of thirty days' wages, have priority over all other classes of liens to the extent of the twenty or fifteen percentage reserved from the contract price. All such mechanics or laborers share *pro rata* in the sum recovered. Wage-earners may also enforce a lien before the contract is completed.

In case of a contractor or sub-contractor making default in finishing his contract the percentage due such contractor or sub-contractor for work done or materials furnished at the time when the lien is claimed by wage-earners cannot be used for any other purpose, or for payment of damages for the non-fulfillment of the contract to the prejudice of the wage-earners.

Every device by any owner, contracter, or sub-contractor to defeat the priority thus given to wage-earners for their wages is null and void.

493. Transfer of Lien. A lienholder may assign his right of a lien by an instrument in writing. A lienholder dying, his right of lien passes to his personal representative.

494. Discharge of Lien. A lien may be discharged by a receipt signed by the claimant or his agent duly authorized in writing acknowledging payment and verified by affidavit, and registered. The fee for registering the discharge is the same as for registering the claim.

495. Vacating a Lien. Upon payment into Court or receiving sufficient security, or upon other grounds, the Court or Judge may vacate the registration of the lien.

496. Lienholders Demanding Terms of Contract, etc. If the owner or his agent refuse to give information concerning the terms of the contract, or knowingly falsely state the terms, or the amount due and unpaid thereon when demanded by a lienholder who suffers any loss thereby shall be liable to him in an action to the amount of such loss.

497. Mode of Enforcing a Lien. An action to enforce a lien may be tried by a Judge of the High Court of Justice at any sittings for trial of actions, and also by the Master in Ordinary, a Local Master of the High Court, an Official Referee, or a Judge of the County Court.

It is not necessary to issue a writ of summons, but merely to file in the proper office a statement of the claim verified by affidavit.

Any number of lienholders having a claim on the same property may join in the action.

An action brought by any lienholder is deemed to be brought on behalf of all other lienholders on the property in question.

Any lienholder for an amount not exceeding $100, or any lienholder not a party to the action, may attend the trial in person or be represented by an agent or solicitor.

498. Cost of Entering Action. Wage-earners have nothing to pay upon entering action to enforce a lien. Persons other than wage-earners are required to pay in law stamps one dollar on every $100 or fraction of $100 of the amount of his claim up to $1,000.

499. Appeal or New Trial. In actions were the amount of judgment is $100 or less there is no appeal, but application may be made to the same Trial Judge within fourteen days after the judgment is pronounced for a new trial.

In actions where the judgment exceeds $100 and not more than $200 an appeal may be made to the Divisional Court whose judgment shall be final.

In all other cases the right of appeal is the same as in actions without a jury in the High Court.

500. Payments to Defeat Lien Claims. No payment made for the purpose of defeating a claim for a lien is legal.

501. Contracts to Waive Remedies, Void. Every agreement, verbal or written, expressed or implied, by which any workman, laborer, servant, mechanic, or other person employed in any kind of manual labor waives the application of the various Acts which provides remedies for the recovery of wages by such employee, is void.

502. Removing Property Affected by Lien. During the continuance of a lien none of the property affected by the lien can be removed to the prejudice of the lien; and the attempt at such removal may be restrained on application to the High Court, or to a judge or other officer having power to try an action to realize a lien, the amount of costs to be at the discretion of the Court or Judge.

503. Lien on Articles Repaired. Every mechanic or other person who has bestowed labor, money or material upon any chattel or thing, as a waggon, organ, or other article, has a lien upon the article for the amount of his claim, and may hold it until it is paid. In case the amount due is not paid within three months from the time it should have been paid he may sell it by auction on giving one week's notice in a newpaper published in the municipality in which the work was done, or if there is no newspaper published in that municipality, then in a newspaper published nearest thereto, stating the name of the person indebted, the amount of the debt, a description of the article to be sold, the time and place of sale and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence (if any) of the owner, if he be a resident of such municipality.

After applying the proceeds of the sale to the payment of the debt and the costs of advertising and sale, the surplus must on application be paid over to the person entitled thereto.

In respect to all kinds of chattels the article must be kept in possession in order to retain a lien. It must also be properly cared for as though it were in a warehouse.

The existence of the lein does not prevent the party holding it from collecting the debt in court.

504. Laborers on Public Works. In case any contractor or subcontractor for any public work makes default in payment of wages of any foreman, workman, or laborer, or for a team employed on the work, the claim for wages must be filed in the office of the member of the Executive Council who let the contract not later than two months after the claim became due, and payment will be made to the extent of any securities or moneys for securing performance of the contract in the hands of the Crown at the time of filing the claim.

505. Priority of Wages Respecting Insolvents. In the assignment of estates for the benefit of creditors the assignee must pay in priority to general creditors the claims for three months' wages or salaries for all persons in the employment of such person at the time of or one month previous to the assignment, and then after that they are to rank as general creditors for the residue of their claims.

It is the same when winding up a joint stock company as with an execution debtor.

506. Garnishee. When any debt or money demand, not being a claim for damages, and which comes within the jurisdiction of a Division Court, is due one person by another, money or a debt due the debtor by another party may be attached while in the hands of the third party by a garnishee summons.

Money due any mechanic, workman, laborer, servant, clerk or employee for wages cannot be garnisheed unless the sum due exceeds $25, and then only to the extent of the excess.

In a case, however, where the debt was contracted for board or lodging, and in the opinion of the Judge the exemption of $25 is not necessary for the maintenance of the debtor's family, then the amount to be secured by the garnishee will be in the option of the Judge.

A single man with no one depending on him for support has not any amount reserved to him by law against a garnishee.

507. Form for Claim of Lien. A. B. (name of claimant) of (residence of claimant), under the Mechanics' and Wage-earners' Lien Act, claims a lien upon the estate of (name and residence of owner of the land upon which the lien is claimed), in the undermentioned land in respect to the following work (service or materials); that is to say, (give a short description of the work done or materials furnished) which work (or service) was (or is to be) done (or materials were furnished) for (name and residence of person upon whose credit the work was done or materials furnished) on or before the day of

The amount claimed as due (or to become due) is the sum of $.

The following is the description of the land to be charged (give number of lot, street, or concession, etc., sufficient for the purpose of registration).

When credit has been given, insert: The said work was done (or materials furnished) on credit, and the period of credit agreed to expired (or will expire) on the day of 18 .

Dated at this day of A.D. 18 .

(Signature of claimant.)

In a claim for wages, simply substitute "wages," etc., for "materials" in the above form.

CHAPTER XXV.

INSOLVENT DEBTORS.

508. Assignment. We have no Insolvency Law in Canada, hence no one can be forced to make an assignment. A person who finds himself unable to meet his obligations may make an assignment for the benefit of his creditors.

The Act contemplates that an assignment should be made to the Sheriff of the County in which the insolvent's goods are located, but the creditors may consent to some other individual acting as assignee that would be chosen by the debtor. They may also make as many subsequent changes as they find necessary.

If an assignment is made it must be advertised—four insertions in a county paper and one insertion in the *Ontario Gazette.*

Inspectors appointed by the creditors give authority to the assignee to act. In meetings called for the purpose of appointing the inspectors, creditors to the amount of $100 have one vote; those of over $100 and under $500 have two votes; those to the amount of $1,000 have three votes and one additional vote for each $1,000. The assignee's salary is fixed by the inspectors appointed by the creditors.

An insolvent person may sell his property to pay with cash what debts he can any time before being declared insolvent, but he cannot sell by Bill of Sale on the eve of insolvency.

The sale or transfer of personal property by an insolvent debtor within sixty days before making an assignment, either through force or voluntarily, may be set aside by an action brought for that purpose by any creditor injured thereby.

509. Creditor's Relief Act. Under the present Act, if a creditor gets judgment against a debtor, this judgment must be entered in the books by the Sheriff of the County where the debtor resides; also all moneys made by the seizure must be deposited with the Sheriff. These books are open free of charge for thirty days, and any person entering their claims within this time are entitled to a rateable division of the debtor's estate, the first creditor's law expenses having first been paid.

510. Fraudulent Preference. Any gift or transfer of property or any security, such as a chattel mortgage, given within thirty days of insolvency, is considered a fraudulent preference, and may be set aside by an action brought for that purpose. It is valid as between the parties themselves, but not as to creditors.

511. Priority of Claims. As soon as a person is declared insolvent the first thing to be paid is taxes; second, rent for one year; third, salaries for three months; fourth, mortgages; fifth, general creditors.

As to the priority of creditors to the effects of a partnership firm, the partnership creditors come first for all partnership effects, and individual creditors first for all individual property; after this the remainder is rateably divided.

512. Absconding Debtors. The goods of a debtor moving out of the place, but not out of the country, cannot be stopped by a creditor unless under an execution.

In case a person being indebted to a sum not exceeding $100 nor less than $4, and absconds from the Province leaving personal property liable to seizure under an execution, or attempts to remove such personal property either out of Ontario or from one county to another, or keeps concealed to avoid service of process, the creditor may file an affidavit to that effect with the clerk of the Division Court, who will issue a warrant to attach the goods that are liable to seizure for debt. Any County Judge or Justice of the Peace for the county could take the affidavit nd issue the warrant.

Care must be taken, however, in this case, as in all others, not to seize the exemptions, or to stop their removal, or there would be a case for damages.

An absconding debtor leaving the country may be arrested and held in custody for bail by a person having a claim against him of $100 or upwards.

A debtor leaving Canada, and going into the United States, may be followed and suit brought in the American court. *The Canadian law prevails in the case,* but the "homestead exemptions" over there are so numerous that in the majority of cases nothing could be recovered.

513. Jurisdiction of Canadian Courts. There are three classes of persons over whom the courts here have jurisdiction: (1) In case of residence, the person living here. (2) In case the contract was made here, although the work was to be performed in another country. (3) If the person has property here, although his residence might be in another country.

SUNDRY ITEMS.

514. Receiving Goods Not Ordered. A merchant receiving an invoice of a shipment of goods in which are some articles that he had not ordered, and yet with this knowledge takes them from the express office or bonded warehouse without receiving permission from the shipper to do so for the purpose of examination, cannot afterwards return them if shipper objects, providing the goods in other respects are free from defects.

515. Money for Betting. Money borrowed for the purpose of betting, the lender knowing it to be borrowed for that purpose, cannot be collected.

Money deposited with a stakeholder on a wagering contract may be recovered back any time after the event before the money has actually been paid over, but not if the stakeholder has paid it over before his authority was revoked.

The payment of a wager is in all cases voluntary, but if paid the money cannot be recovered back.

516. Replevin. A person whose goods, chattels or personal property of any description or land have been wrongfully detained may obtain a Judge's order for a Writ of Replevin. In case where the claimant can show that the delay in waiting for a Judge's order would materially prejudice his rights to such property, a Writ of Replevin may issue without a Judge's order. In such case the Sheriff would take and detain the property until a Judge's order or rule of the Court is obtained.

Before the Sheriff acts upon a Writ of Replevin the claimant is required to give him a bond to treble the amount of the property that he will prosecute the suit without delay, or make return of the property if a return is adjudged, and pay such damages to the defendant as he may have sustained through the proceedings. If the value of the goods for which the Writ of Replevin is obtained does not exceed $60, the writ may issue from the Division Court; if over $60 and up to $200, the writ may issue from the County Court.

A copy of the writ is not served on the defendant until after the property has been replevied, or as much of it as is possible.

517. Right of Way for Vehicles and Pedestrians. One person or vehicle meeting another on the highway must turn to the right, or be

liable for damages. Pedestrians have the "right of way" on public streets, and if drivers of vehicles run them down or do them injury by colliding with them, they are liable to fine and also for damages.

518. Entering Cases in Division Court. Merchants or other persons who have accounts they wish to sue, can enter their own cases as well as any solicitor would for them. Make out an itemized account for each, or if it is a note, take the note itself and go to the Clerk of the Division Court for suit, and the Clerk will do the rest.

If the account is under $10, the cost right through to judgment will be only $1.25 for clerk's fees, or $1.65 including the bailiff's fees for service of the summons, exclusive of his mileage.

Where the amount exceeds $10, the costs increase according to the amount of the bill, but in no case will exceed $2.50.

Actions may be taken in the Division Court on any sum up to $100 for accounts, or $200 on notes and written instruments.

519. Copyright. In Canada a copyright may be obtained by the author or publisher of any book, picture, drawing, map, chart, etc., which holds for 28 years from date of copyright. The fee is $1 for registration and 50 cents for a certificate of registration, which is forwarded to the author. ~~Two~~3copies of the work must be forwarded to the Department of Agriculture, except in case of a painting or sculpture, etc., a written description will do instead of the ~~two~~3 copies. Every article copyrighted must contain a notice of the copyright. Any person who inserts such notice without having a copyright, is liable to a penalty of $300. An infringement of a copyright incurs a heavy penalty and the confiscation of the works. To secure a copyright write

To the Minister of Agriculture,
(Copyright Branch),
Ottawa,

who will forward a copy of the Copyright Act and full information, so that any person of ordinary intelligence may do all the correspondence. No postage is required, as the letters go free.

520. Trade Marks. A *general* trade mark, such as "Pure Gold," which a merchant or manufacturer uses to distinguish his goods of various kinds from those of others, may be registered for $30. There is no limit to its duration.

A *specific* trade mark, which is used for only one kind of goods, as "B.B.B." (Burdock Blood Bitters), may be registered for $25, and stands for 25 years.

Industrial designs, as letter heads, labels, etc., may be registered for $5, which secures its exclusive use for 5 years. A copy of the Act may be obtained from the Minister of Agriculture (Trade Mark Branch).

521. Patentright. Nearly any article or machine that is new and useful may be patented. The fee for five years is $20; for 10 years, $40; for 15 years, $60. For full information write to the Commissioner of Patents, Department of Agriculture, Ottawa, who will forward a copy of the Act with full details.

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